KN 30 UND

LIBRARY
STOCK

64

UNDERHILL'S

LAW OF TORTS.

ELEVENTH EDITION.

New Law of Property Acts

THE NEW POSITION MADE CLEAR
AT A GLANCE

TOPHAM'S
NEW LAW OF PROPERTY

Second Edition

BY

ALFRED F. TOPHAM, LL.M., K.C.

JUST PUBLISHED. PRICE 15/- NET

The author possesses unique qualifications and an unrivalled knowledge of his subject. The **NEW LAW** stands out in strong relief from the **OLD,** owing to employment of different type and vertical lines in the margin. To get a thorough grasp of the position, there is no better book to study.

BUTTERWORTH & CO. (S. S. BOND)
BELL YARD, TEMPLE BAR, LONDON, W.C.2

A SUMMARY

OF THE

LAW OF TORTS;

OR,

WRONGS INDEPENDENT OF CONTRACT.

BY

ARTHUR UNDERHILL, M.A., LL.D.,

OF LINCOLN'S INN, BARRISTER-AT-LAW;

One of the Conveyancing Counsel of the Court, and sometime Reader in the Law of Property to the Council of Legal Education;
Author of "A Concise Treatise on the Law relating to Private Trusts and Trustees," "The Law of Partnership" etc.

ELEVENTH EDITION.

BY

A. C. HAGON, B.A., LL.B.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW

Lately a Tutor to the Law Society.
Examiner to the University of New Zealand in Shipping and Marine Insurance Law for the Degree of Master of Laws.

LONDON:
BUTTERWORTH & CO., BELL YARD, TEMPLE BAR.

SYDNEY:
MELBOURNE: BUTTERWORTH & CO. (AUSTRALIA), LTD.

CALCUTTA:
MADRAS: BUTTERWORTH & CO. (INDIA), LTD.

WINNIPEG:
TORONTO: BUTTERWORTH & CO. (CANADA), LTD.

WELLINGTON (N.Z.): BUTTERWORTH & CO. (AUSTRALIA), LTD.

1925

Printed at The Ballantyne Press
Spottiswoode, Ballantyne & Co. Ltd
Colchester, London & Eton, England

This Work,

WHICH WAS FORMERLY DEDICATED TO

JOSEPH UNDERHILL, ESQ., Q.C.,

THEN

Recorder of Newcastle-under-Lyme

AND A

Master of the Bench of the Honourable Society of the Middle Temple,

IS NOW

MOST REGRETFULLY INSCRIBED

To his Memory.

EDITOR'S PREFACE.

IN this Edition the arrangement of topics hitherto adopted has been retained. Where judicial decisions have made a re-statement of the law necessary, this has been attempted and the authorities referred to. In consequence it has been found requisite to re-arrange and partly rewrite the articles dealing with Remoteness of Damage, and Negligence (as the result of the decision of the Court of Appeal in *Re Polemis*, [1921] 3 K. B. 560), Contributory Negligence, Responsibility for Dangerous Premises and Animals, Liability under the Fatal Accidents Act, 1846, Liability for Torts in general (including breach of Statutory Duties), and, in outline only, some of the main changes caused by the Workmen's Compensation Act, 1923. An endeavour has been made to bring the text up to date by incorporating the effect of all recent cases of adequate importance, and references to these will be found duly noted. The Editor wishes again to acknowledge his indebtedness for the assistance and suggestions he has received from Mr. W. H. Crawley of the Inner Temple both in the preparation and revision of this Edition.

A. C. HAGON.

4 KING'S BENCH WALK,
TEMPLE,
April 1925.

EXTRACT FROM PREFACE

TO THE EIGHTH EDITION.

The facts that seven Editions of this Work have been sold, that an American firm have thought it worth their while to issue an unauthorised edition in the United States, and that a Canadian edition has been published, render it no longer necessary to apologise for its existence.

Many of my friends and clients have expressed surprise that an Equity and Conveyancing Counsel should have written a Treatise on the Law of Torts. The answer is, that every lawyer, whatever his speciality may be, ought to know the *principles* of every branch of the law ; and, in my student days, my endeavours to fathom the principles of the Law of Torts were surrounded with so much unnecessary difficulty, owing to the absence of any text-book separating *principle* from *illustration*, that I became convinced that a new crop of students would welcome even such a guide as I was capable of furnishing. The result has proved that I was not mistaken.

Indeed, however useful the great treatises then existing were for the practitioner, they were almost useless to the student. In the first place, to his unaccustomed mind they presented a mere chaos of examples, for the most part unexplained, and, in the absence of explanation, seeming very often in direct contradiction. What student without careful explanation would grasp the difference between *Fletcher* v. *Rylands* and *Nichols* v. *Marsland* for instance ?

In the second place, the men are few indeed who can trust their memories to retain the contents of a large

treatise with accuracy; and although that is not necessary, yet it *is* essential that they should accurately remember the *principles* of the law.

For these and other reasons, I ventured to write this work; and I still think that if a student will *thoroughly master* it, he will know as much of the *principles* of the Law of Torts as will suffice to make him a competent general practitioner, and to pass him through his examinations so far as that subject is concerned.

I do not assert for one instant that it will enable him to answer every case that comes before him, but I am not acquainted with any man whose mental stock enables him to do this. In the vast majority of cases the practitioner who has any regard for the interests of his clients, or the reputation of himself, will turn to his digests and his reports; for however well he may understand the principles of the law, it is only very long practice indeed, or the intuition of genius, which enables him to apply these principles to complicated facts with ease and certainty.

* * * * *

ARTHUR UNDERHILL.

5 NEW SQUARE, LINCOLN'S INN, W.C.
1st June 1905.

TABLE OF CONTENTS.

PAGE

PREFACE vii

TABLE OF STATUTES CITED xix

TABLE OF CASES CITED xxiii

INTRODUCTION lxix

PART I.

OF TORTS IN GENERAL.

CHAPTER I.

OF THE NATURE OF A TORT.

ART. 1. Definition of a Tort 3

,, 2. *Ubi jus ibi remedium* 7

,, 3. Of Volition and Intention in relation to the unauthorised Act or Omission. Inevitable Accident ... 8

,, 4. Malice and Moral Guilt 10

,, 5. Of Remoteness or the Connection of the Damage with the unauthorised Act or Omission 13

,, 6. The Act or Omission must be unauthorised 15

, 7. "Act of State" 16

,, 8. General Immunity of Judicial Officers 17

,, 9. General Immunity of various Executive Officers ... 19

,, 10. Authorisation by Statute 20

,, 11. *Volenti non fit injuria* 23

,, 12. To what extent the Civil Remedy is interfered with where the unauthorised Act or Omission constitutes a Felony 24

CHAPTER II.

BREACH OF STATUTORY DUTIES.

ART. 13. Breach of Duty created for Benefit of Individuals 27

,, 14. Breach of Duty created for Benefit of Public ... 28

,, 15. Highway Authorities not liable for Nonfeasance ... 29

CHAPTER III.

RELATION OF CONTRACT AND TORT.

PAGE

ART. 16. Distinction between Actions for Tort and for Breach of Contract 33
„ 17. Privity not necessary where the Remedy is in Tort 35
„ 18. Duties gratuitously undertaken 37

CHAPTER IV.

VARIATION IN THE GENERAL PRINCIPLE WHERE THE UNAUTHORISED ACT OR OMISSION TAKES PLACE OUTSIDE THE JURISDICTION OF OUR COURTS.

ART. 19. Torts committed Abroad 39

CHAPTER V.

OF PERSONAL DISABILITY TO SUE AND TO BE SUED FOR TORT.

ART. 20. Who may sue 41
„ 21. Who may be sued for a Tort 42
„ 22. Joint Tort-feasors 46

CHAPTER VI.

LIABILITY FOR TORTS COMMITTED BY OTHERS.

Section I.—LIABILITY OF HUSBAND FOR TORTS OF WIFE.

ART. 23. Wife's Ante-nuptial and Post-nuptial Torts ... 49

Section II.—LIABILITY OF PARTNERS FOR EACH OTHER'S TORTS.

ART. 24. Statutory Rule 51

Section III.—LIABILITY FOR TORTS OF AGENTS AUTHORISED EXPRESSLY OR BY RATIFICATION.

ART. 25. *Qui facit per alium facit per se* 52
„ 26. Ratification of Tort committed by an Agent ... 53

Section IV.—LIABILITY FOR TORTS OF SERVANTS.

PAGE
ART. 27. Respondeat Superior 54
„ 28. Unauthorised Delegation by Servants 60
„ 29. Servants of the Crown 61

Section V.—LIABILITY FOR NEGLIGENCE OF INDEPENDENT CONTRACTORS.

ART. 30. The General Rule 62

CHAPTER VII.

THE EFFECT OF THE DEATH OR BANKRUPTCY OF EITHER PARTY.

Section I.—COMMON LAW.

"Actio personalis moritur cum persona."

ART. 31. Death generally destroys the Right of Action ... 67
„ 32. Effect of Bankruptcy 68

Section II.—STATUTORY LIABILITY FOR CAUSING DEATH.

ART. 33. Actions by Personal Representatives of Persons killed by Tort 69

CHAPTER VIII.

OF DAMAGES IN ACTIONS FOR TORT.

ART. 34. Damages for Personal Injury... 75
„ 35. Damages for Injury to Property 76
„ 36. Presumption of Damage against a Wrongdoer ... 78
„ 37. Consequential Damages 79
„ 38. Prospective Damages 80
„ 39. Aggravation and Mitigation 81
„ 40. Insurance not to be taken into Account 83

CHAPTER IX.

OF INJUNCTIONS TO PREVENT THE CONTINUANCE OF TORTS 85

ART. 41. Injuries remediable by Injunction 86
„ 42. Public Convenience does not justify the Continuance of a Tort 89

CHAPTER X.

OF THE LIMITATION OF ACTIONS FOR TORT.

Section I.—THE STATUTES OF LIMITATIONS.

PAGE

ART. 43. The Principal Periods of Limitation 91
,, 44. Commencement of Period 92
,, 45. Continuing Torts 95
,, 46. Disability 96

Section II.—PUBLIC AUTHORITIES PROTECTION ACT, 1893.

ART. 47. Special limitation in favour of Public Officers and Authorities 96

PART II.

OF RULES RELATING TO PARTICULAR TORTS.

CHAPTER I.

OF DEFAMATION.

ART. 48. Definitions 101
,, 49. What is Defamatory 102
,, 50. When is Special Damage essential to an Action for Slander? 106
,, 51. The Libel or Slander must refer to the Plaintiff ... 111
,, 52. Publication 113
,, 53. Repeating Libel or Slander 114
,, 54. Justification 116
,, 55. Fair Comment 117
,, 56. Absolute Privilege 120
,, 57. Qualified Privilege 122
,, 58. Apology 128
,, 59. Slander of Title and Slander of Goods 129

CHAPTER II.

OF MALICIOUS PROSECUTION.

PAGE

ART. 60. General Rule 131
,, 61. Prosecution by the Defendant 132
,, 62. Want of Reasonable and Probable Cause 133
,, 63. Malice 135
,, 64. Failure of the Prosecution 137
,, 65. Damage 138

CHAPTER III.

OF MAINTENANCE.

ART. 66. Definition 139

CHAPTER IV.

OF INJURY TO SERVANTS AND OF HARBOURING AND SEDUCTION.

ART. 67. Enticing and Harbouring 143
,, 68. The Ordinary Action for Seduction 144
,, 69. Misconduct of Parent 147
,, 70. Damages in Ordinary Action for Seduction ... 147

CHAPTER V.

TRADE MOLESTATION.

ART. 71. Inducing Breach of Contract 149
,, 72. Conspiracy, and Molestation by Inducements not to Work, not to Employ, and not to Trade with... 151
,, 73. Unfair Competition. Passing Off 154

CHAPTER VI.

OF DECEIT OR FRAUD.

ART. 74. Definition of Fraud 157
,, 75. Statements as to Credit 160
,, 76. The Liability of Directors and Promoters of Companies 160

CHAPTER VII.

OF NEGLIGENCE.

PAGE

ART. 77. Definition 163
,, 78. Duty of Persons using Highway to take Care ... 165
,, 79. Duty of Carriers of Passengers 166
,, 80. Duty of Occupiers of Land and Houses to Persons coming by Invitation, etc. 167
,, 81. Duty of Bailees of Goods 173
,, 82. Duty to take Precautions with regard to Things Dangerous in themselves 174
,, 83. Contributory Negligence 178
,, 84. Effective Cause... 182
,, 85. Onus of Proof—*Res ipsa loquitur* 183
,, 86. Duties of Judge and Jury 185
,, 87. *Volenti non fit injuria* 185

CHAPTER VIII.

LIABILITY FOR BREACH OF DUTY TO PREVENT DAMAGE FROM DANGEROUS THINGS AND ANIMALS.

ART. 88. The Rule in *Fletcher* v. *Rylands* 189
,, 89. Damage by Animals 194
,, 90. Duty to keep Fire from doing Mischief 199

CHAPTER IX.

LIABILITY OF EMPLOYERS FOR INJURIES TO THEIR SERVANTS AND WORKMEN.

Section I.—COMMON-LAW LIABILITY 203

ART. 91. The Doctrine of Common Employment 204
,, 92. Volunteer Servants—*Volenti non fit injuria* ... 208

Section II.—THE EMPLOYERS' LIABILITY ACT, 1880.

ART. 93. Epitome of Act 209

Section III.—THE WORKMEN'S COMPENSATION ACTS, 1906–1924.

ART. 94. Liability to Pay Compensation 212

CHAPTER X.

OF PRIVATE INJURY FROM PUBLIC NUISANCES.

PAGE

ART. 95. Description of Public Nuisances 219
,, 96. Public Nuisance only actionable in respect of Particular Damage 222
,, 97. Liability of Owner or Occupier for Public Nuisances 223

CHAPTER XI.

PRIVATE NUISANCES.

Section I.—NUISANCES TO CORPOREAL HEREDITAMENTS.

ART. 98. General Liability 229
,, 99. Reasonableness of Place 232
,, 100. Plaintiff coming to the Nuisance 234
,, 101. Liability of Occupier and Owner for Private Nuisances 235
,, 102. Prescription to commit a Nuisance 237
,, 103. Remedy of Reversioners for Nuisances 238
,, 104. Remedy by Abatement 239

Section II.—NUISANCES TO INCORPOREAL HEREDITAMENTS 241

ART. 105. Disturbance of Right of Support for Land without Buildings 242
,, 106. Disturbance of Support of Buildings 245
,, 107. Disturbance of Right to Light and Air 246
,, 108. Disturbance of Water Rights 249
,, 109. Disturbance of Private Rights of Way 252

CHAPTER XII.

TRESPASS TO THE PERSON.

ART. 110. General Liability for Trespass to the Person ... 255
,, 111. Definition of Assault 256
,, 112. Definition of Battery... 257
,, 113. Definition of False Imprisonment 258
,, 114. Justification of Trespass to the Person 260
,, 115. Self-Defence as Justification of Assault and Battery 260
,, 116. Justification by Parental or Other Authority ... 262
,, 117. Justification by Judicial Authority 262
,, 118. Power of Magistrates to Arrest or order Arrest ... 264
,, 119. Power of Constables and Others to Arrest in Obedience to Warrant 265

PAGE

ART. 120. Arrest for Felony without Warrant 265
,, 121. Power of Arrest for Preservation of the Peace ... 267
,, 122. Arrest for Misdemeanor 268
,, 123. Institution of Criminal Proceedings endangers Right of Action for Assault 269
,, 124. Amount of Damages 270

CHAPTER XIII.

OF TRESPASS TO LAND AND DISPOSSESSION.

Section I.—OF TRESPASS "QUARE CLAUSUM FREGIT."

ART. 125. Definition 271
,, 126. Trespassers *ab initio* 273
,, 127. Possession necessary to enable the Plaintiff to maintain an Action of Trespass 274
,, 128. Trespasses by Joint Owners 276
,, 129. Limitation 276
,, 130. Remedies other than by Action 277

Section II.—OF DISPOSSESSION.

ART. 131. Definition 278
,, 132. Onus of Proof of Title 278
,, 133. Limitation 279
,, 134. Commencement of Period of Limitation 280

CHAPTER XIV.

TRESPASS TO GOODS, DETENTION AND CONVERSION OF GOODS.

ART. 135. Definitions 283
,, 136. Possession necessary to maintain an Action for Trespass 288
,, 137. Trespassers *ab initio* 290
,, 138. Conversion and Detention 290
,, 139. Waiver of Tort 293
,, 140. Trespass and Conversion by Joint Owners ... 294
,, 141. Remedy by Recaption 294
,, 142. Remedy by Action of Replevin 295

INDEX.

TABLE OF STATUTES.

		PAGE
4 Edw. 3, c. 7.	(Administration of Estates, 1330)	68
25 Edw. 3, c. 5.	(Administration of Estates, 1351)	68
21 Hen. 8, c. 11.	(Restitution of Goods Stolen, 1529) ...	287
21 Jac. 1, c. 16.	(Limitation Act, 1623)	81, 94, 95
	s. 3	91, 147, 277
	s. 7	96
31 Car. 2, c. 2.	(Habeas Corpus Act, 1679)	260
11 Geo. 2, c. 19.	(Distress for Rent Act, 1737), ss. 19, 20 ...	274
17 Geo. 2, c. 38.	(Poor Relief Act, 1743), s. 8	274
24 Geo. 2, c. 44.	(Constable, 1751), s. 6	265
14 Geo. 3, c. 78.	(Fires Prevention (Metropolis) Act, 1774)—	
	s. 86	199, 200
56 Geo. 3, c. 100.	(Habeas Corpus Act, 1816)	260
5 Geo. 4, c. 83.	(Vagrancy Act, 1824)	269
9 Geo. 4, c. 14.	(Statute of Frauds Amendment Act, 1828)—	
	s. 6	52, 160
2 & 3 Will. 4, c. 71.	(Prescription Act, 1832) 237, 238, 247, 248, 249	
	s. 3	246, 247
	s. 4	246, 248
3 & 4 Will. 4, c. 27.	(Real Property Limitation Act, 1833)—	
	s. 2	279
	s. 3	280
	s. 10	281
	s. 11	281
	s. 16	96, 280
	s. 17	280
	s. 29	280
	s. 34	95
c. 42.	(Civil Procedure Act, 1833)	92
	s. 2	67
2 & 3 Vict. c. 93.	(County Police Act, 1839), s. 8	266
3 & 4 Vict. c. 9.	(Parliamentary Papers Act, 1840)—	
	ss. 1, 2	121, 127
	s. 3	127
6 & 7 Vict. c. 86.	(London Hackney Carriages Act, 1843) ...	56
c. 96.	(Libel Act, 1843), s. 1...	129
	s. 2	129

		PAGE
8 & 9 Vict. c. 20.	(Railways Clauses Consolidation Act, 1845)—	
	s. 77	244
	s. 78	244
	s. 79	244
	s. 80	244
	s. 81	244
	s. 82	244
	s. 83	244
	s. 84	244
	s. 85	244
	s. 154	269
c. 75.	(Libel Act, 1845), s. 2...	129
9 & 10 Vict. c. 93.	(Fatal Accidents Act, 1846) 25, 42, 69, 70, 71, 73, 91, 98	
	s. 1	70
	ss. 2, 4	70
10 & 11 Vict. c. 89.	(Town Police Clauses Act, 1847)	56
11 & 12 Vict. c. 44.	(Justices Protection Act (Jervis' Act), 1848)—	
	s. 1	19
14 & 15 Vict. c. 19.	(Prevention of Offences Act, 1851), s. 11 ...	268
15 & 16 Vict. c. 76.	(Common Law Procedure Act, 1852) ...	3
20 & 21 Vict. c. 85.	(Matrimonial Causes Act, 1857), s. 26 ...	49, 50
23 & 24 Vict. c. 32.	(Ecclesiastical Courts Jurisdiction Act, 1860)—	
	s. 3	269
24 & 25 Vict. c. 96.	(Larceny Act, 1861)—	
	s. 23	277
c. 97.	(Malicious Damage Act, 1861)—	
	s. 61	268
c. 100.	(Offences against the Person Act, 1861)—	
	ss. 42–45	269
27 & 28 Vict. c. 95	(Fatal Accidents Act, 1864), s. 1	70
28 & 29 Vict. c. 60.	(Dogs Act, 1865)	197
33 & 34 Vict. c. 23.	(Forfeiture Act, 1870), ss. 8, 30	41
34 & 35 Vict. c. 31.	(Trade Union Act, 1871)	45
35 & 36 Vict. c. 94.	(Licensing Act, 1872)—	
	s. 12	268
36 & 37 Vict. c. 66.	(Judicature Act, 1873)	276
	s. 25 (8)	85, 88
37 & 38 Vict. c. 57.	(Real Property Limitation Act, 1874)—	
	s. 1...	279
	s. 2...	281
	ss. 3, 4	280
	s. 5...	280
	s. 9...	95
39 & 40 Vict. c. 22.	(Trade Union Act Amendment Act, 1876) ...	45

		PAGE
41 & 42 Vict. c. 16.	(Factory and Workshop Act, 1878) ...	208
43 & 44 Vict. c. 42.	(Employers' Liability Act, 1880) ...	203, 209, 211
	s. 4	91
45 & 46 Vict. c. 50.	(Municipal Corporations Act, 1882), s. 191	266
c. 75.	(Married Women's Property Act, 1882)	49, 50, 96
	s. 1	41, 49
	s. 12	42
	ss. 13–15	49
	s. 17	42
46 & 47 Vict. c. 52.	(Bankruptcy Act, 1883), ss. 30 (2), 37 ...	69
48 & 49 Vict. c. 69.	(Criminal Law Amendment Act, 1885),	
	s. 10	133
51 & 52 Vict. c. 43.	(County Courts Act, 1888)—	
	s. 116	33
	ss. 134–137	295
c. 64.	(Law of Libel Amendment Act, 1888)	128, 129
	s. 3	123
	s. 4	128
	s. 6	129
53 & 54 Vict. c. 39.	(Partnership Act, 1890)—	
	s. 1	51
	s. 10	47, 51
	s. 12	47, 51
c. 64.	(Directors' Liability Act, 1890)	161
54 & 55 Vict. c. 51.	(Slander of Women Act, 1891) ...	107, 109
c. 76.	(Public Health (London) Act, 1891), s. 29 ...	29
56 & 57 Vict. c. 61.	(Public Authorities Protection Act, 1893) ...	91, 96, 97, 98
c. 71.	(Sale of Goods Act, 1893)—	
	ss. 21–23	286
	s. 24	286, 287
	s. 25 (2)	286
58 & 59 Vict. c. 39.	(Summary Jurisdiction (Married Women) Act, 1895), s. 6	49
60 & 61 Vict. c. 37.	(Workmen's Compensation Act, 1897) ...	212
63 & 64 Vict. c. 22.	(Workmen's Compensation Act, 1900) ...	212
3 Edw. 7, c. 36.	(Motor Car Act, 1903)	269
c. 42.	(County Courts Act, 1903), s. 3	33
5 Edw. 7, c. 11.	(Railway Fires Act, 1905)	23, 201
6 Edw. 7, c. 32.	(Dogs Act, 1906)	197
	s. 1	197
	(1)	195
	s. 7	197
c. 47.	(Trade Disputes Act, 1906)	45, 46, 149
	s. 2	153
	s. 3	11, 149

		PAGE
6 Edw. 7, c. 47.	(Trade Disputes Act, 1906)—	
	s. 4	46, 149
	s. 5 (3)	... 150
c. 58.	(Workmen's Compensation Act, 1906)	97, 203, 212, 216
	s. 1	... 213
	(2)	215, 216
	s. 4	... 63
	s. 8	... 213
	s. 9	... 216
	s. 13	213, 216
	Sched. I.	213, 216
8 Edw. 7, c. 7.	(Fatal Accidents (Damages) Act, 1908)	...73, 83
c. 69.	(Companies (Consolidation) Act, 1908), s. 84	161
9 Edw. 7, c. 44.	(Housing, Town Planning, etc., Act, 1909)—	
	ss. 14, 15	169, 227
1 & 2 Geo. 5, c. 46.	(Copyright Act, 1911)—	
	s. 10	92
c. 57.	(Maritime Conventions Act, 1911)—	
	s. 3	46
	s. 8	...92, 97
4 & 5 Geo. 5, c. 59.	(Bankruptcy Act, 1914)	68
	s. 18 (1)	69
9 & 10 Geo. 5, c. 73.	(County Courts Act, 1919)—	
	s. 1	33
	s. 2	33
	s. 3	33
	s. 4	33
	s. 5	33
	s. 6	33
	s. 7	33
	s. 8	33
	s. 9	33
	s. 10	33
	s. 11	33
	s. 12	33
	c. 79. (Trade Marks Act, 1919)—	
	s. 6	156
13 & 14 Geo. 5, c. 27.	(Railway Fires Act (1905) Amendment Act, 1923)	201
	c. 32. (Workmen's Compensation Act, 1923)	215, 217

TABLE OF CASES CITED.

A.

PAGE

Abbott *v.* Isham (1920), 90 L. J. K. B. 309; 124 L. T. 734; 85 J. P. 30; 18 L. G. R. 719; 37 T. L. R. 7 187

Abrath *v.* North Eastern Rail. Co. (1886), 11 App. Cas. 247; 50 J. P. 659; 55 L. J. Q. B. 457; 55 L. T. 63 ... ... 133, 134, 135

Adam *v.* Ward, [1917] A. C. 309; 86 L. J. K. B. 849; 117 L. T. 34; 33 T. L. R. 277 ... ... 122, 123, 125

Adams *v.* Lancashire and Yorkshire Rail. Co. (1869), L. R. 4 C. P. 739; 38 L. J. C. P. 277; 20 L. T. 850; 17 W. R. 884 ... 186

Adams *v.* Ursell, [1913] 1 Ch. 269; 82 L. J. Ch. 157; 108 L. T. 292; 57 Sol. J. 227 87

Adamson *v.* Jarvis (1827), 4 Bing. 66; 5 L. J. (o.s.) C. P. 68; 12 Moore C. P. 241; 29 R. R. 503 47

Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675 [C. A.]; [1924] W. N. 54; 40 T. L. R. 299; 93 L. J. K. B. 361; 130 L. T. 746 118

Agency Co. *v.* Short (1888), 13 App. Cas. 793; 53 J. P. 132; 58 L. J. P. C. 4; 59 L. T. 677; 37 W. R. 433 95, 278, 279

Alabaster *v.* Harness, [1895] 1 Q. B. 339; 64 L. J. Q. B. 76; 14 R. 54; 71 L. T. 740; 43 W. R. 196 [C. A.] 140

Alcott *v.* Millar's Karri and Jarrah Forests, Limited (1905), 91 L. T. 722; 21 T. L. R. 30 [C. A.] 130

Aldin *v.* Latimer Clark, Muirhead & Co., [1894] 2 Ch. 437; 63 L. J. Ch. 601; 71 L. T. 119; 42 W. R. 453; 8 R. 352 247

Aldred *v.* Constable (1844), 6 Q. B. 370; 8 Jur. 956 285

Alexander *v.* Jenkins, [1892] 1 Q. B. 797; 56 J. P. 452; 61 L. J. Q. B. 634; 66 L. T. 391; 40 W. R. 546 [C. A.] ... 107, 111

Allbutt *v.* General Medical Council of Education and Registration (1889), 23 Q. B. D. 400; 54 J. P. 36; 58 L. J. Q. B. 606; 61 L. T. 585; 37 W. R. 771 [C. A.] 128

Allen *v.* Flood, [1898] A. C. 1; 62 J. P. 595; 67 L. J. Q. B. 119; 77 L. T. 717; 46 W. R. 258 ... ... 11, 152

—— *v.* New Gas Co. (1876), 1 Ex. D. 251; 45 L. J. Ex. 668; 34 L. T. 541 204

—— *v.* Woods (1893), 68 L. T. 143; 4 R. 249 [C. A.] 279

Allsop *v.* Allsop (1860), 29 L. J. Ex. 315; 2 L. T. 290; 8 W. R. 449; 5 H. & N. 534; 6 Jur. (N.S.) 433... 108

Ambergate Rail. Co. *v.* Midland Rail. Co. (1853), 2 El. & Bl. 793; 2 C. L. R. 261; 23 L. J. Q. B. 17; 18 Jur. 243 277

Ambler *v.* Gordon, [1905] 1 K. B. 417; 74 L. J. K. B. 185; 92 L. T. 96; 53 W. R. 300 249

Amerika, The, [1917] A. C. 38; 86 L. J. P. 58; 116 L. T. 34; [1916] W. N. 424; 33 T. L. R. 135; 61 Sol. J. 158 ... ... 5, 25

PAGE

Anderson *v.* Gorrie, [1895] 1 Q. B. 668; 71 L. T. 382; 14 R. 79 [C. A.] 17, 18, 121
——— *v.* Oppenheimer (1880), 5 Q. B. D. 602; 49 L. J. Q. B. 708 [C. A.] 194
——— *v.* Pacific Fire and Marine Insurance Co. (1872), L. R. 7 C. P. 65; 26 L. T. 130; 20 W. R. 280; 1 Asp. M. L. C. 220 158
——— *v.* Radcliffe (1858), El. Bl. & El. 806; 29 L. J. Q. B. 128; 1 L. T. 487; 8 W. R. 283; 6 Jur. (N.S.) 578 275
Andrew *v.* Failsworth Industrial Society, [1904] 2 K. B. 32; 68 J. P. 409; 73 L. J. K. B. 511; 90 L. T. 611; 52 W. R. 451; 20 T. L. R. 429 [C. A.] 214
Andrews *v.* Mockford, [1896] 1 Q. B. 372; 65 L. J. Q. B. 302; 73 L. T. 726 [C. A.] 158
——— *v.* Waite, [1907] 2 Ch. 500; 76 L. J. Ch. 676; 97 L. T. 428 ... ...85, 88
Appleby *v.* Franklin (1885), 17 Q. B. D. 93; 50 J. P. 359; 55 L. J. Q. B. 129; 54 L. T. 135; 34 W. R. 231 25
Argentino, The (1889), 13 P. D. 61, 191; 14 App. Cas. 519 ... 78
Arkwright *v.* Newbold (1881), 17 Ch. D. 301; 50 L. J. Ch. 372; 44 L. T. 393; 29 W. R. 655 158
Armory *v.* Delamirie (1722), 1 Str. 505; 1 Sm. L. C. 356 ... 78, 79, 292
Arnold *v.* Blaker (1871), L. R. 6 Q. B. 433; 40 L. J. Q. B. 185; 19 W. R. 1090 222
Arnold and Butler *v.* Bottomley, [1908] 2 K. B. 151; 77 L. J. K. B. 584; 98 L. T. 777; 24 T. L. R. 365; 52 Sol. J. 300 [C. A.] 116
Ashby *v.* White (1703), 2 Lord Raymond, 938; 3 Lord Raymond, 320; 1 Sm. L. C. 240; 14 How. St. Tr. 695 ... ... 5, 7, 242
Asher *v.* Whitlock (1865), L. R. 1 Q. B. 1; 35 L. J. Q. B. 17; 13 L. T. 254; 14 W. R. 26; 11 Jur. (N.S.) 925 ... 275, 278
Ashton *v.* Stock (1877), 6 Ch. D. 719; 25 W. R. 862 281
Aspden *v.* Seddon (1875), L. R. 10 Ch. 394; 44 L. J. Ch. 359; 32 L. T. 415; 23 W. R. 580 243
Atkinson *v.* Newcastle Waterworks Co. (1877), 2 Ex. D. 441; 46 L. J. Ex. 775; 36 L. T. 761; 25 W. R. 794 [C. A.] 28
Att.-Gen. *v.* Birmingham Borough Council (1858), 6 W. R. 811; 4 K. & J. 528 ... ... 89, 220
——— *v.* Brighton and Hove Co-operative Supply Association, [1900] 1 Ch. 276; 69 L. J. Ch. 204; 81 L. T. 762; 48 W. R. 314 [C. A.] 220
——— *v.* Cole & Son, [1901] 1 Ch. 205; 65 J. P. 88; 70 L. J. Ch. 148; 83 L. T. 725 233
——— *v.* Conduit Colliery Co., [1895] 1 Q. B. 301; 59 J. P. 70; 64 L. J. Q. B. 207; 71 L. T. 777; 43 W. R. 366; 15 R. 267 [C. A.] 243
——— *v.* Cory Bros. & Co., [1921] 1 A. C. 521; 90 L. J. Ch. 221; 85 J. P. 129; 19 L. G. R. 145; 37 T. L. R. 343; 125 L. T. 98 ... ... 189, 190
——— *v.* De Keyser's Royal Hotel, [1920] A. C. 508; 89 L. J. Ch. 417; 122 L. T. 691; 36 T. L. R. 600; 64 Sol. J. 513; 57 Sc. L. R. 757 43
——— *v.* Dorking Union Guardians (1882), 20 Ch. D. 595; 51 L. J. Ch. 585; 46 L. T. 573; 30 W. R. 579 [C. A.] 88
——— *v.* Great Northern Rail. Co. (1908), 72 J. P. 442; 99 L. T. 695; reversed, [1909] 1 Ch. 775; 73 J. P. 41; 78 L. J. Ch. 577 [C. A.] 251

PAGE

Att.-Gen. *v.* Great Western Ry. Co., [1924] 2 K. B. 1; [1924] W. N. 34; 93 L. J. K. B. 524; 68 Sol. Jo. 500; 40 T. L. R. 255; 131 L. T. 522 201
——— *v.* Horner (1886), 11 App. Cas. 66; 50 J. P. 564; 55 L. J. Q. B. 193; 54 L. T. 281; 34 W. R. 641 ... 222
——— *v.* London and North Western Railway, [1900] 1 Q. B. 78; 63 J. P. 772; 69 L. J. Q. B. 26; 81 L. T. 649 [C. A.] 89
——— *v.* Luton Local Board (1859), 2 Jur. (N.S.) 180 220
——— *v.* Manchester Corporation, [1893] 2 Ch. 87; 57 J. P. 343; 62 L. J. Ch. 459; 68 L. T. 608; 41 W. R. 459; 3 R. 427 22
——— *v.* Tod Heatley, [1897] 1 Ch. 560; 66 L. J. Ch. 275; 76 L. T. 174; 45 W. R. 394 [C. A.] 220, 225
Attwood *v.* Chapman, [1914] 3 K. B. 275; 79 J. P. 65; 83 L. J. K. B. 1666; 111 L. T. 726; 30 T. L. R. 596 123
Austin *v.* Dowling (1870), L. R. 5 C. P. 534; 39 L. J. C. P. 260; 22 L. T. 721; 18 W. R. 1003 ... ... 263, 264
——— *v.* Great Western Rail. Co. (1867), L. R. 2 Q. B. 442; 36 L. J. Q. B. 201; 16 L. T. 320; 15 W. R. 863 167
Austin Friars Steamship Co., Ltd. *v.* Spillers and Bakers, Ltd., [1915] 3 K. B. 586; 84 L. J. K. B. 1958; 113 L. T. 805; 31 T. L. R. 535; 20 Com. Cas. 342 [C. A.] 46
Australian Newspaper Co. *v.* Bennett, [1894] A. C. 284; 58 J. P. 604; 63 L. J. P. C. 105; 70 L. T. 597; 6 R. 484 105
Ayre *v.* Craven (1834), 4 L. J. K. B. 35; 2 Ad. & Ell. 2; 4 N. & M. 220; 41 R. R. 359 111

B.

Backhouse *v.* Bonomi (1861), 34 L. J. Q. B. 181; 4 L. T. 754; 9 W. R. 769; 9 H. L. Cas. 503; 7 Jur. (N.S.) 809 ... 92, 93, 242
Baddeley *v.* Granville (Earl) (1887), 19 Q. B. D. 423; 51 J. P. 822; 56 L. J. Q. B. 501; 57 L. T. 268; 36 W. R. 63 185
Baily & Co. *v.* Clark, Son, and Morland, [1902] 1 Ch. 649; 71 L. J. Ch. 396; 86 L. T. 309; 50 W. R. 511 [C. A.] 250
Bain *v.* Central Vermont Ry., [1921] 2 A. C. 412; 90 L. J. P. C. 221 ... ... 54, 55
Bainbridge *v.* Postmaster-General, [1906] 1 K. B. 178; 75 L. J. K. B. 366; 94 L. T. 120; 54 W. R. 221; 22 T. L. R. 70 [C. A.] 61
Baker *v.* James Bros. & Sons, [1921] 2 K. B. 674; 37 T. L. R. 591; 19 L. G. R. 551; 90 L. J. (K. B.) 1190; 125 L. T. 414 187
——— *v.* Snell, [1908] 2 K. B. 825; 77 L. J. K. B. 1090; 24 T. L. R. 811; 52 Sol. J. 681 [C. A.] 55, 194, 195, 196
Baldwin *v.* Casella (1872), L. R. 7 Ex. 325; 41 L. J. Ex. 167; 26 L. T. 707; 21 W. R. 16 197
Ball *v.* Ray (1873), L. R. 8 Ch. 467; 28 L. T. 346; 21 W. R. 282 ... ... 231, 233
Ballard *v.* Tomlinson (1885), 29 Ch. D. 115; 49 J. P. 692; 54 L. J. Ch. 454; 52 L. T. 942; 33 W. R. 533 [C. A.] ... 190, 250, 252
Bamfield *v.* Goole and Sheffield Transport Co., Limited, [1910] 2 K. B. 94; 79 L. J. K. B. 1070; 103 L. T. 201 [C. A.] ... 178
Bamford *v.* Turnley (1862), 3 B. & S. 62; 31 L. J. Q. B. 286; 10 W. R. 803; 9 Jur. (N.S.) 377 ... ... 232, 233

PAGE

Banbury *v.* Bank of Montreal, [1918] A. C. 626; 87 L. J. K. B. 1158; 23 Com. Cas. 337; 119 L. T. 446; [1918] W. N. 231; 34 T. L. R. 518; 62 Sol. J. 665 ... ... 52, 75, 160

Bank of England *v.* Cutler, [1908] 2 K. B. 208; 77 L. J. K. B. 889; 98 L. T. 336; 24 T. L. R. 518; 52 Sol. J. 442 [C. A.] ... 47

Barber *v.* Penley, [1893] 2 Ch. 447; 62 L. J. Ch. 623; 68 L. T. 662; 3 R. 489 231

Barker *v.* Furlong, [1891] 2 Ch. 172; 60 L. J. Ch. 368; 64 L. T. 411; 39 W. R. 621 292

——— *v.* Herbert, [1911] 2 K. B. 633 ... ... 225, 227

Barnardiston *v.* Chapman (1715), cited 4 East, 121; Bul. N. P. 34: 294

Barnes *v.* Ward (1850), 9 C. B. 392; 19 L. J. C. P. 195; 2 Car. & K. 661; 14 Jur. 334 ... ... 220, 222

Barnett *v.* Cohen, [1921] 2 K. B. 462; [1921] W. N. 143; 37 T. L. R. 629; 90 L. J. K. B. 1307; 19 L. G. R. 623 72

Barns *v.* St. Mary Islington Guardians (1912), 76 J. P. 11; 10 L. G. R. 113 53

Barratt *v.* Kearns, [1905] 1 K. B. 504; 74 L. J. K. B. 318; 92 L. T. 255; 53 W. R. 356; 21 T. L. R. 212 [C. A.] 121

Bartlett *v.* Wells (1862), 1 B. & S. 836; 31 L. J. Q. B. 57; 5 L. T. 607; 10 W. R. 229; 8 Jur. (N.S.) 762 44

Bartonshill Coal Co. *v.* Reid (1858), 6 W. R. 664; 4 Jur. (N.S.) 767; 3 Macq. H. L. Ca. 266 206

Barwick *v.* English Joint Stock Bank (1867), L. R. 2 Ex. 259; 36 L. J. Ex. 147; 16 L. T. 461; 15 W. R. 877 54

Basébé *v.* Matthews (1867), L. R. 2 C. P. 684; 36 L. J. M. C. 93; 16 L. T. 417; 15 W. R. 839 137

Bass *v.* Gregory (1890), 25 Q. B. D. 481; 55 J. P. 119; 59 L. J. Q. B. 574 ... ... 247, 248

Bates *v.* Batey & Co., Limited, [1913] 3 K. B. 351; 82 L. J. K. B. 963; 108 L. T. 1036; 29 T. L. R. 616 ... ... 174, 177

Bathurst (Borough) *v.* Macpherson (1879), 4 App. Cas. 256; 48 L. J. P. C. 61; 41 L. T. 778 30

Battersea (Lord) *v.* City of London Sewers Commissioners, [1895] 2 Ch. 708; 59 J. P. 728; 65 L. J. Ch. 81; 73 L. T. 116; 44 W. R. 124; 13 R. 795 248

Battishill *v.* Reed (1856), 18 C. B. 696; 25 L. J. C. P. 290 ... 231

Baxter *v.* Taylor (1833), 2 L. J. K. B. 65; 4 B. & Ad. 72; 1 N. & M. 13; 38 R. R. 227 239

Bayley *v.* Manchester, Sheffield and Lincolnshire Rail. Co. (1872), L. R. 7 C. P. 415; 41 L. J. C. P. 278 59

Beard *v.* London General Omnibus Co., [1900] 2 Q. B. 530; 69 L. J. Q. B. 895; 83 L. T. 362; 48 W. R. 658 [C. A.] 55, 57

Bearn, The, [1906] P. 48 [C. A.] 43

Beasley *v.* Roney, [1891] 1 Q. B. 509; 55 J. P. 566; 60 L. J. Q. B. 408; 65 L. T. 153; 39 W. R. 415 41

Beaumont *v.* Kaye, [1904] 1 K. B. 292; 73 L. J. K. B. 213; 90 L. T. 51; 52 W. R. 241; 20 T. L. R. 183 [C. A.] ... 50

Beaver *v.* Manchester Corporation (1857), 8 El. & Bl. 44; 26 L. J. Q. B. 311; 4 Jur. (N.S.) 23 272

Beck *v.* Pierce (1889), 23 Q. B. D. 316; 54 J. P. 198; 58 L. J. Q. B. 516; 61 L. T. 448; 38 W. R. 29 [C. A.] 49

Becker *v.* Riebold (1913), 30 T. L. R. 142 53

Beckham *v.* Drake (1849), 2 H. L. Cas. 579; 13 Jur. 921 ... 69

Beckwith *v.* Philby (1827), 5 L. J. (O.S.) M. C. 132; 6 B. & C. 635; 9 D. & R. 487; 30 R. R. 484 266

PAGE
Bedford *v.* M'Kowl (1800), 3 Esp. 119 ... ... 147, 148
Bedingfield *v.* Onslow (1685), 3 Lev. 209 238
Belfast Ropeworks Co. *v.* Boyd (1888), 21 L. R. Ir. 560 [C. A.] ... 251
Bell *v.* Stone (1798), 1 B. & P. 331; 4 R. R. 820 105
Bellamy *v.* Wells (1890), 60 L. J. Ch. 156; 63 L. T. 635; 39 W. R. 158 231
Belsize Motor Supply Co. *v.* Cox, [1914] 1 K. B. 244; 83 L. J. K. B. 261; 110 L. T. 151 34
Benjamin *v.* Storr (1874), L. R. 9 C. P. 400; 43 L. J. C. P. 162; 30 L. T. 362; 22 W. R. 631 223
Bennett *v.* Allcott (1787), 2 T. R. 166 146
Beresford *v.* White (1914), 30 T. L. R. 591; 58 Sol. J. 670 [C. A.] 121
Bernina, The, Mills *v.* Armstrong (1888), 13 App. Cas. 1; 52 J. P. 212; 57 L. J. P. 65; 58 L. T. 423; 36 W. R. 870; 6 Asp. M. C. 257 ... ... 181, 182
Berringer *v.* Great Eastern Rail. Co. (1879), 4 C. P. D. 163; 48 L. J. C. P. 400; 27 W. R. 681 ... ... 71, 143
Berry *v.* Humm, [1915] 1 K. B. 627; 84 L. J. K. B. 918; 61 T. L. R. 198 72
Besozzi *v.* Harris (1858), 1 F. & F. 92 195
Betts *v.* Gibbins (1834), 2 A. & E. 57; 4 L. J. K. B. 1; 41 R. R. 381; 4 N. & M. 64 47
Bird *v.* Holbrook (1828), 6 L. J. (O.S.) C. P. 146; 4 Bing. 628; 1 Moo. & P. 607; 29 R. R. 657 ... ... 170, 173
—— *v.* Jones (1845), 7 Q. B. 742; 15 L. J. Q. B. 82; 9 Jur. 870; 68 R. R. 564 ... ... 258, 259
Birmingham Corporation *v.* Allen (1877), 6 Ch. D. 284; 46 L. J. Ch. 673; 37 L. T. 207; 25 W. R. 810 [C. A.] ... 242, 243
Birmingham Vinegar Brewery Co. *v.* Powell, [1897] A. C. 710; 66 L. J. Ch. 763; 76 L. T. 792 155
Bishop *v.* Balkis Consolidated Co. (1890), 25 Q. B. D. 512; 59 L. J. Q. B. 565; 63 L. T. 601; 39 W. R. 99; 2 Meg. 292 [C. A.] 160
Black *v.* Christchurch Finance Co., [1894] A. C. 48; 58 J. P. 332; 63 L. J. P. C. 32; 70 L. T. 77; 6 R. 394 66
Blacker *v.* Lake & Elliot, Limited (1912), 106 L. T. 533 ... 36, 174, 176
Blades *v.* Higgs (1861), 10 C. B. (N.S.) 713; 30 L. J. C. P. 347; 4 L. T. 551; 7 Jur. (N.S.) 1289; affirmed 11 H. L. Cas. 621; 20 C. B. (N.S.) 214; 34 L. J. C. P. 286; 12 L. T. 615; 13 W. R. 927; 11 Jur. (N.S.) 701 295
Blair and Sumner *v.* Deakin, Eden and Thwaites *v.* Deakin (1887), 52 J. P. 327; 57 L. T. 522 46
Blake *v.* Lanyon (1795), 6 T. R. 221; 3 R. R. 162 143
—— *v.* Midland Rail. Co. (1852), 18 Q. B. 93; 21 L. J. Q. B. 233; 16 Jur. 562... 73
Bland *v.* Yates (1914), 58 Sol. J. 612 ... ... 230, 232, 234
Blofield *v.* Payne (1833), 2 L. J. K. B. 68; 4 B. & Ad. 410; 1 N. & M. 353 ... ... 154, 155
Bloodworth *v.* Gray (1844), 7 Man. & G. 334; 8 Sco. N. R. 9; 66 R. R. 720 ... ... 107, 110
Blyth *v.* Birmingham Waterworks Co. (1856), 25 L. J. Ex. 212; 11 Ex. 781; 4 W. R. 294; 2 Jur. (N.S.) 333 163
—— *v.* Fladgate, Morgan *v.* Blyth, Smith *v.* Blyth, [1891] 1 Ch. 337; 60 L. J. Ch. 66; 63 L. T. 546; 39 W. R. 422 51
Boden *v.* Roscoe, [1894] 1 Q. B. 608; 58 J. P. 368; 63 L. J. Q. B. 767; 70 L. T. 450; 42 W. R. 445; 10 R. 173 277
Bodlewell, The, [1907] P. 286; 76 L. J. P. 61; 96 L. T. 854; 23 T. L. R. 356 78

PAGE

Bonnard *v.* Perryman, [1891] 2 Ch. 269 ; 60 L. J. Ch. 617 ; 65 L. T. 506 ; 39 W. R. 435 [C. A.] 87, 88
Booth *v.* Arnold, [1895] 1 Q. B. 571 ; 59 J. P. 215 ; 64 L. J. Q. B. 443 ; 72 L. T. 310 ; 43 W. R. 360 ; 14 R. 326 [C. A.] 107, 111
Bottomley *v.* Brougham, [1908] 1 K. B. 584 ; 77 L. J. K. B. 311 ; 99 L. T. 111 ; 24 T. L. R. 262 ; 52 Sol. J. 225 18, 120, 121
Bound *v.* Lawrence, [1892] 1 Q. B. 226 ; 56 J. P. 118 ; 61 L. J. M. C. 21 ; 65 L. T. 844 ; 40 W. R. 1 [C. A.] 211
Bowen *v.* Anderson, [1894] 1 Q. B. 161 ; 42 W. R. 236 ; 10 R. 47 224
——— *v.* Hall (1881), 6 Q. B. D. 333 ; 45 J. P. 373 ; 50 L. J. Q. B. 305 ; 44 L. T. 75 ; 29 W. R. 367 [C. A.] 150
Bower *v.* Peate (1876), 1 Q. B. D. 321 ; 45 L. J. Q. B. 446 ; 35 L. T. 321 66
Bowyer *v.* Cook (1847), 4 C. B. 236 277
Box *v.* Jubb (1879), 4 Ex. D. 76 ; 48 L. J. Ex. 417 ; 41 L. T. 97 ; 27 W. R. 415 192
Boxsius *v.* Goblet Frères, [1894] 1 Q. B. 842 ; 58 J. P. 670 ; 63 L. J. Q. B. 401 ; 70 L. T. 368 ; 42 W. R. 392 ; 9 R. 224 [C. A.] 114, 127
Boyle *v.* Tamlyn (1827), 5 L. J. (o.s.) K. B. 134 ; 6 B. & C. 329 ; 9 Dow. & R. 430 ; 30 R. R. 345 198
Bradburn *v.* Great Western Rail. Co. (1874), L. R. 10 Ex. 1 ; 44 L. J. Ex. 9 ; 31 L. T. 464 ; 23 W. R. 468 83
Bradford Corporation *v.* Ferrand, [1902] 2 Ch. 655 ; 67 J. P. 21 ; 71 L. J. Ch. 859 ; 87 L. T. 388 ; 51 W. R. 122 250
——— ——— *v.* Myers, [1916] 1 A. C. 242 ; 80 J. P. 121 ; 85 L. J. K. B. 146 ; 114 L. T. 83 ; 32 T. L. R. 113 ; 60 Sol. J. 74 ; 14 L. G. R. 130 97
——— *v.* Pickles, [1895] A. C. 587 ; 60 J. P. 3 ; 64 L. J. Ch. 759 ; 73 L. T. 353 ; 44 W. R. 190 ; 11 R. 286 : 10, 11, 152, 229, 230, 251
Bradlaugh *v.* Newdegate (1883), 11 Q. B. D. 1 ; 52 L. J. Q. B. 454 ; 31 W. R. 792 ... ... 139, 140
Bradshaw *v.* Waterlow & Sons, Limited, [1915] 3 K. B. 527 ; 31 T. L. R. 556 [C. A.] 136
Brandon *v.* Osborne Garrett & Co., [1924] 1 K. B. 548 ; [1924] W. N. 33 ; 93 L. J. K. B. 304 ; 68 Sol. J. 460 ; 40 T. L. R. 235 ; 130 L. T. 670 ... ... 14, 181
Brassington *v.* Llewellyn (1858), 27 L. J. Ex. 297 279
Brewer *v.* Dew (1843), 12 L. J. Ex. 448 ; 11 M. & W. 625 ; 1 D. & L. 383 ; 7 Jur. 953 ; 63 R. R. 690 69
——— *v.* Sparrow (1827), 6 L. J. (o.s.) K. B. 1 ; 7 B. & C. 310 ; 1 Man. & R. 2 293
Brimelow *v.* Casson, [1924] 1 Ch. 302 ; [1924] W. N. 7 ; 68 Sol. J. 275 ; 130 L. T. 670 ; 93 L. J. Ch. 256 10
Brinsmead *v.* Harrison (1871), L. R. 6 C. P. 584 ; 40 L. J. C. P. 281 ; 24 L. T. 798 ; 19 W. R. 956 ... 291
——— *v.* ——— (1872), L. R. 7 C. P. 547 ; 41 L. J. C. P. 190 ; 27 L. T. 99 ; 20 W. R. 784 ... ... 46, 47
British Cash and Parcel Conveyers, Limited *v.* Lamson Store Service Co., Limited, [1908] 1 K. B. 1006 ; 77 L. J. K. B. 649 ; 98 L. T. 875 [C. A.] 140
British Columbia Electric Rail. Co., Limited *v.* Loach, [1916] 1 A. C. 719 ; 85 L. J. P. C. 23 ; 113 L. T. 946... 180

PAGE

British Electric Rail. Co. *v.* Gentile, [1914] A. C. 1034; 83 L. J. P. C. 353; [1914] W. N. 278; 30 T. L. R. 594 71
British Rail. Traffic Co. *v.* C. R. C. Co., [1922] 2 K. B. 260; 126 L. T. 602; 86 J. P. 70; 20 L. G. R. 102; 38 T. L. R. 190; 91 L. J. K. B. 824 130
British South Africa Co. *v.* Companhia de Moçambique, [1893] A. C. 602; 63 L. J. Q. B. 70; 69 L. T. 604; 6 R. 1 ... 39, 40
British Thomson-Houston Co. *v.* Sterling Accessories, [1924] 2 Ch. 33; [1924] W. N. 142; 68 Sol. J. 595; 40 T. L. R. 544; 41 R. P. C. 311; 93 L. J. Ch. 335; 131 L. T. 535 45
British Westinghouse Electric and Manufacturing Co. *v.* Underground Electric Railways Co. of London, [1912] A. C. 673; 81 L. J. K. B. 1132; 107 L. T. 325; 56 Sol. J. 734 78
Britton *v.* South Wales Rail. Co. (1858), 27 L. J. Ex. 355 ... 75
Brocklebank *v.* Thompson, [1903] 2 Ch. 344; 72 L. J. Ch. 626; 89 L. T. 209 253
Broggi *v.* Robins (1898), 14 T. L. R. 439 224
Bromage *v.* Prosser (1825), 4 B. & C. 247; 6 Dow. & R. 296; 1 Car. & P. 475; 3 L. J. (o.s.) K. B. 203; 24 R. R. 241 ... 10
Bromley *v.* Mercer, [1922] 2 K. B. 126 [C. A.]; [1922] W. N. 112; 38 T. L. R. 496; 91 L. J. K. B. 577; 127 L. T. 282 ... 221, 224
Broom *v.* Ritchie (1904), 6 F. 842 5
Brown *v.* Boorman (1844), 3 Q. B. 511; 11 Cl. & F. 1; 65 R. R. 1 33
——— *v.* Hawkes, [1891] 2 Q. B. 718; 55 J. P. 823; 61 L. J. Q. B. 151; 65 L. T. 108 [C. A.] 136
——— *v.* Robins (1859), 4 H. & N. 186; 28 L. J. Ex. 250 ... 245
Browne *v.* Flower, [1911] 1 Ch. 219; 80 L. J. Ch. 181; 103 L. T. 557; 55 Sol. J. 108 229
Brunsden *v.* Humphrey (1884), 14 Q. B. D. 141; 49 J. P. 4; 53 L. J. Q. B. 476; 51 L. T. 529; 32 W. R. 944 [C. A.] ... 80
Brunswick (Duke) *v.* Hanover (King) (1844), 13 L. J. Ch. 107; 6 Beav. 1; 8 Jur. 253; 63 R. R. 1 ... 43
——— ——— *v.* Harmer (1849), 14 Q. B. 185; 19 L. J. Q. B. 20; 14 Jur. 110 113
Bryant *v.* Lefever (1879), 4 C. P. D. 172; 48 L. J. C. P. 380; 40 L. T. 579; 27 W. R. 592 [C. A.] 247, 248
Bulli Coal Mining Co. *v.* Osborne, [1899] A. C. 351; 68 L. J. P. C. 49; 80 L. T. 430; 47 W. R. 545 92
Burgess *v.* Burgess (1853), 22 L. J. Ch. 675; 3 De G. M. & G. 896; 17 Jur. 292 155
——— *v.* Gray (1845), 1 C. B. 578; 14 L. J. C. P. 184 63
Burnard *v.* Haggis (1863), 14 C. B. (N.S.) 45; 32 L. J. C. P. 189; 8 L. T. 320; 11 W. R. 644; 9 Jur. (N.S.) 1325 44
Buron *v.* Denman (1859), 2 Exch. 167 17
Burr *v.* Smith, [1909] 2 K. B. 306; 78 L. J. K. B. 889; 101 L. T. 194; 25 T. L. R. 542; 53 Sol. J. 502; 16 Manson, 210 [C. A.] 121
—— *v.* Theatre Royal, Drury Lane, Limited, [1907] 1 K. B. 544; 76 L. J. K. B. 459; 96 L. T. 447; 23 T. L. R. 299 [C. A.] ... 206
Burton *v.* Hughes (1824), 3 L. J. C. P. 243; 2 Bing. 173; 9 Moore, 334 293
Butcher *v.* Butcher (1827), 6 L. J. (o.s.) K. B. 51; 7 B. & C. 399; 1 Man. & R. 220; 31 R. R. 237... 275
Butler *v.* Fife Coal Co., Limited, [1912] A. C. 149; 81 L. J. P. C. 97; 106 L. T. 161; 28 T. L. R. 150; [1912] S. C. (H.L.) 33; 49 Sc. L. R. 228 ... ... 164, 205

PAGE
Butterfield *v.* Forrester (1809), 11 East, 60 ; 10 R. R. 433. 181, 182
Bygraves *v.* Dicker, [1923] 2 K. B. 585 ; [1923] W. N. 151 ; 92 L. J. K. B. 1021 ; 129 L. T. 688 56
Byrne *v.* Boadle (1863), 33 L. J. Ex. 13 ; 9 L. T. 450 ; 12 W. R. 279 ; 2 H. & C. 722 ... ... 183, 184
Bywell Castle, The (1879), 4 P. D. 219 186

C.

Cable *v.* Bryant, [1908] 1 Ch. 259 ; 77 L. J. Ch. 78 ; 98 L. T. 98 : 247, 248
Cahill *v.* Fitzgibbon (1885), 16 L. R. Ir. 371 266
Calder *v.* Halket (1840), 3 Moo. P. C. C. 28 ; 50 R. R. 1 17
Caledonian Rail. Co. *v.* Mulholland, [1898] A. C. 216 ; 67 L. J. P. C. 1 ; 77 L. T. 570 ; 46 W. R. 236 ... ... 163, 164
Calye's Case (1584), 1 Sm. L. C. 119 174
Campbell *v.* Spottiswoode (1863), 3 B. & S. 769 ; 32 L. J. Q. B. 185 ; 8 L. T. 201 ; 11 W. R. 569 ; 9 Jur. (N.S.) 1069 119
Canadian Pacific Wine Co. *v.* Tully, [1921] 2 A. C. 417 ; [1921] W. N. 266 ; 37 T. L. R. 944 ; 90 L. J. P. C. 233 290
Cannon *v.* Rimington (1852), 12 C. B. 1 ; 21 L. J. C. P. 137 ... 281
Capel *v.* Powell (1864), 17 C. B. (N.S.) 743 ; 34 L. J. C. P. 168 ; 11 L. T. 421 ; 13 W. R. 159 ; 10 Jur. (N.S.) 1255 50
Capital and Counties Bank *v.* Henty (1882), 7 App. Cas. 741 ; 47 J. P. 214 ; 52 L. J. Q. B. 232 ; 47 L. T. 662 ; 31 W. R. 157 : 101, 103, 104, 106, 124
Carlisle *v.* Orr, [1918] 2 I. R. 442 24
Carlyon *v.* Lovering (1857), 26 L. J. Ex. 251 ; 5 W. R. 347 ; 1 H. & N. 784 252
Carpenter *v.* Finsbury Borough Council, [1920] 2 K. B. 195 ; 84 J. P. 107 ; 89 L. J. K. B. 554 ; 123 L. T. 299 ; 64 Sol. J. 426 ; 18 L. G. R. 370 ... ... 21, 31
Carpue *v.* London and Brighton Co. (1844), 5 Q. B. 747 ; 13 L. J. Q. B. 138 ; Dav. & M. 608 ; 3 Rail. Cas. 692 ; 8 Jur. 464 ... 184
Carr *v.* Clarke (1818), 2 Chit. 260 ; 23 R. R. 748 146
—— *v.* Fracis Times & Co., [1902] A. C. 176 ; 71 L. J. K. B. 361 ; 50 W. R. 257 ... ... 39, 40
Carslake *v.* Mappledoram (1788), 2 T. R. 473 110
Carstairs *v.* Taylor (1871), L. R. 6 Ex. 217 ; 40 L. J. Ex. 129 ; 19 W. R. 723 194
Carter *v.* St. Mary Abbots, Kensington, Vestry (1900), 64 J. P. 548 [C. A.] 53
Castrique *v.* Behrens (1861), 3 El. & El. 709 ; 30 L. J. Q. B. 163 ; 4 L. T. 52 ; 7 Jur. (N.S.) 1028 137
Cavalier *v.* Pope, [1906] A. C. 428 ; 75 L. J. K. B. 609 ; 95 L. T. 65 ; 22 T. L. R. 648 169
Chamberlain *v.* Boyd (1883), 11 Q. B. D. 407 ; 47 J. P. 372 ; 52 L. J. Q. B. 277 ; 48 L. T. 328 ; 31 W. R. 572 [C. A.] ... 108
Chambers *v.* Goldthorpe, [1901] 1 K. B. 624 ; [1901] W. N. 51 ... 18
Chaplin (W. H.) & Co., Limited *v.* Westminster Corporation, [1901] 2 Ch. 329 ; 65 J. P. 661 ; 70 L. J. Ch. 679 ; 85 L. T. 88 ; 49 W. R. 586 6
Charing Cross, West End and City Electricity Supply Co. *v.* London Hydraulic Power Co., [1914] 3 K. B. 772 ; 78 J. P.

PAGE

305 ; 83 L. J. K. B. 1352 ; 111 L. T. 198 ; 30 T. L. R. 441 ; 58 Sol. J. 577 ; 12 L. G. R. 807 [C. A.] 21
Chasemore *v.* Richards (1859), 29 L. J. Ex. 81 ; 7 W. R. 685 ; 7 H. L. Cas. 349 ; 5 Jur. (N.S.) 873 ... ... 230, 250, 251
Chastey *v.* Ackland, [1895] 2 Ch. 389 ; 64 L. J. Q. B. 523 ; 72 L. T. 845 ; 43 W. R. 627 ; 12 R. 420 [C. A.] 247, 248
——— *v.* ———, [1897] A. C. 155 ; 66 L. J. Q. B. 518 ; 76 L. T. 430 ... ... 247, 248
Chatterton *v.* Secretary of State for India in Council, [1895] 2 Q. B. 189 ; 59 J. P. 596 ; 64 L. J. Q. B 676 ; 72 L. T. 858 ; 14 R. 504 120
Chauntler *v.* Robinson (1849), 4 Ex. 163 ; 19 L. J. Ex. 170 ... 245
Cheater *v.* Cater, [1918] 1 K. B. 247 ; 87 L. J. K. B. 449 ; 118 L. T. 203 ; 34 T. L. R. 123 ; 62 Sol. J. 141 [C. A.] 194
Cheshire *v.* Bailey, [1905] 1 K. B. 237 ; 74 L. J. K. B. 176 ; 92 L. T. 142 ; 53 W. R. 322 ; 21 T. L. R. 130 [C. A.] 55
Chinery *v.* Viall (1860), 5 H. & N. 295 ; 29 L. J. Ex. 180 ; 2 L. T. 466 ; 8 W. R. 629 34
Christie *v.* Cowell (1790), Peake, 4 ; 3 R. R. 642 109
Christopherson *v.* Blare (1848), 11 Q. B. 473 ; 17 L. J. Q. B. 109 ; 12 Jur. 374 257
Churchill *v.* Siggers (1854), 3 El. & Bl. 929 ; 23 L. J. Q. B. 308 ; 2 W. R. 551 ; 2 C. L. R. 1509 ; 18 Jur. 773 ... ... 131, 132
Citizens' Life Assurance Co. *v.* Brown, [1904] A. C. 423 ; 73 L. J. P. C. 102 ; 90 L. T. 739 ; 53 W. R. 176 ; 20 T. L. R. 497 43, 45, 60, 137
Clark *v.* Freeman (1848), 17 L. J. Ch. 142 ; 11 Beav. 112 ; 12 Jur. 149 88
—— *v.* London General Omnibus Co., Limited, [1906] 2 K. B. 648 ; 75 L. J. K. B. 907 ; 95 L. T. 435 ; 22 T. L. R. 691 [C. A.] 71, 72, 143
—— *v.* Molyneux (1877), 3 Q. B. D. 237 ; 47 L. J. Q. B. 230 ; 37 L. T. 694 ; 26 W. R. 104 ; 14 Cox C. C. 10 [C. A.] 122, 123, 124, 125
—— *v.* Woods (1848), 2 Ex. 395 ; 3 New Sess. Cas. 253 ; 17 L. J. M. C. 189 20
Clarke *v.* Army and Navy Co-operative Society, [1903] 1 K. B. 155 ; 78 L. J. K. B. 153 ; 88 L. T. 1 [C. A.] 176
Clayton *v.* Le Roy, [1911] 2 K. B. 1031 ; 75 J. P. 521 ; 81 L. J. K. B. 49 ; 105 L. T. 430 ; 27 T. L. R. 479 [C. A.] 287, 291
——— *v.* Pontypridd Urban District Council, [1918] 1 K. B. 219 ; 82 J. P. 246 ; 87 L. J. K. B. 645 ; 118 L. T. 219 ; 16 L. G. R. 141 98
Cleary *v.* Booth, [1893] 1 Q. B. 465 ; 57 J. P. 375 ; 62 L. J. M. C. 87 ; 68 L. T. 349 ; 41 W. R. 391 ; 5 R. 263 ; 17 Cox C. C. 611 ... 262
Clement *v.* Chivis (1829), 7 L. J. (O.S.) K. B. 189 ; 9 B. & C. 172 ; 4 M. & R. 127 ; 32 R. R. 624 105
Clinton *v.* Lyons (J.) and Co. Limited, [1912] 3 K. B. 198 ; 81 L. J. K. B. 923 ; 106 L. T. 988 ; 28 T. L. R. 462 195
Clissold *v.* Cratchley, [1910] 2 K. B. 244 ; 79 L. J. K. B. 635 ; 102 L. T. 520 ; 26 T. L. R. 409 ; 54 Sol. J. 442 [C. A.] 132
Coaker *v.* Willcocks, [1911] 2 K. B. 124 ; 80 L. J. K. B. 1026 ; 104 L. T. 769 ; 27 T. L. R. 357 [C. A.] 272
Cobbett *v.* Gray (1850), 4 Ex. 729 ; 19 L. J. Ex. 137 256
Cockburn *v.* Smith, [1924] 2 K. B. 119 ; 68 Sol. J. 631 ; 40 T. L. R. 476 ; 93 L. J. K. B. 764 ; 131 L. T. 334 226

PAGE
Cocke *v.* Jennor (1604), Hob. 66 46
Cockroft *v.* Smith (1703), 11 Mod. Rep. 43 261
Coggs *v.* Bernard (1703), 1 Sm. L. C. 173 ; 2 Ld. Raym. 909 ... 37, 173, 174
Coldrick *v.* Partridge, Jones & Co., Limited, [1910] A. C. 77 ; 79 L. J. K. B. 173 ; 101 L. T. 835 ; 26 T. L. R. 164 ; 54 Sol. J. 132 ; 47 Sc. L. R. 610 207
Collard *v.* Marshall, [1892] 1 Ch. 571 ; 61 L. J, Ch. 268 ; 66 L. T. 248 ; 40 W. R. 473 89
Collis *v.* Laugher, [1894] 3 Ch. 659 ; 63 L. J. Ch. 851 ; 71 L. T. 226 ; 43 W. R. 202 ; 8 R. 760 248
Colls *v.* Home and Colonial Stores, Limited, [1904] A. C. 179 ; 73 L. J. Ch. 484 ; 90 L. T. 687 ; 53 W. R. 30 ; 20 T. L. R. 475 : 88, 247, 249
Consett Industrial and Provident Society, Limited *v.* Consett Iron Co., Limited, [1922] 2 Ch. 135 [C. A.] ; [1922] W. N. 127 ; 66 Sol. J. 452 ; 38 T. L. R. 584 ; 127 L. T. 383 ; 91 L. J. Ch. 630 246
Consolidated Co. *v.* Curtis & Son, [1892] 1 Q. B. 495 ; 56 J. P. 565 ; 61 L. J. Q. B. 325 ; 40 W. R. 426 286
Conway *v.* Wade, [1909] A. C. 506 ; 78 L. J. K. B. 1025 ; 101 L. T. 248 ; 25 T. L. R. 779 ; 53 Sol. J. 754 ... ... 11, 150
Cook *v.* Beal (1697), Ld. Raym. 177 261
—— *v.* North Metropolitan Tramways Co. (1887), 18 Q. B. D. 683 ; 51 J. P. 630 ; 56 L. J. Q. B. 309 ; 56 L. T. 448 ; 57 L. T. 476 ; 35 W. R. 577 211
Cooke *v.* Midland Great Western Rail. Co. of Ireland, [1909] A. C. 229 ; [1909] 2 I. R. 499 ; 78 L. J. C. P. 76 ; 100 L. T. 626 ; 25 T. L. R. 375 ... ... 177, 182
—— *v.* Wildes (1885), 5 E. & B. 328 ; 24 L. J. Q. B. 267 ; 3 W. R. 458 ; 3 C. L. R. 1090 ; 1 Jur. (N.S.) 610 123
Cooper *v.* Booth (1785), 3 Esp. 135 ; 4 Dougl. 339 ; 1 T. R. 535 n. 133
——— *v.* Shepherd (1846), 3 C. B. 266 ; 15 L. J. C. P. 237 ; 4 D. & L. 214 ; 10 Jur. 758 ; 71 R. R. 349 291
——— *v.* Willomatt (1845), 14 L. J. C. P. 219 ; 1 C. B. 672 ; 9 Jur. 598 ... ... 292, 293
Cope *v.* Sharpe, [1912] 1 K. B. 496 ; 81 L. J. K. B. 346 ; 106 L. T. 56 ; 28 T. L. R. 157 ; 56 Sol. J. 187 [C. A.] 273, 288
Corea *v.* Peiris, [1909] A. C. 549 ; 100 L. T. 790 ; 25 T. L. R. 631 136
Cornford *v.* Carlton Bank, [1899] 1 Q. B. 392 ; 68 L. J. Q. B. 196 ; 80 L. T. 121 ; [1900] 1 Q. B. 22 ; 69 L. J. Q. B. 1020 ; 81 L. T. 415 [C. A.] 45
Cory *v.* Davies, [1923] 2 Ch. 95 ; [1923] W. N. 80 ; 92 L. J. Ch. 261 ; 67 Sol. J. 517 ; 39 T. L. R. 268 ; 129 L. T. 208 ... 66, 245, 246
Costar *v.* Hetherington (1859), 28 L. J. M. C. 198 270
Coughlin *v.* Gillison, [1899] 1 Q. B. 145 ; 68 L. J. Q. B. 147 ; 79 L. T. 627 ; 47 W. R. 113 [C. A.] 38, 177
Coulson *v.* Coulson (1887), 3 T. L. R. 846 [C. A.] 88
Coward *v.* Baddeley (1859), 28 L. J. Ex. 260 ; 4 H. & N. 478 ; 5 Jur. (N.S.) 414 ; 7 W. R. 466 257
Cowles *v.* Potts (1865), 34 L. J. Q. B. 247 ; 11 Jur. (N.S.) 946 ; 13 W. R. 858 126
Cowley *v.* Newmarket Local Board, [1892] A. C. 345 ; 56 J. P. 805 ; 62 L. J. Q. B. 65 ; 67 L. T. 486 ; 1 R. 45 29
Cox *v.* Burbidge (1863), 13 C. B. (N.S.) 430 ; 32 L. J. C. P. 89 ; 11 W. R. 435 ; 9 Jur. (N.S.) 970 ... ... 195, 198

PAGE
Cox *v.* Coulson, [1916] 2 K. B. 177 ; 85 L. J. K. B. 1081 ; 114 L. T. 599 ; 32 T. L. R. 406 ; 60 Sol. J. 402 [C. A.] ... 9, 172
—— *v.* English, Scottish, and Australian Bank, [1905] A. C. 168 ; 74 L. J. P. C. 62 ; 92 L. T. 483 134
—— *v.* Glue (1848), 5 C. B. 533 ; 17 L. J. C. P. 162 ; 12 Jur. 185... 275
—— *v.* Lee (1869), L. R. 4 Ex. 284 ; 38 L. J. Ex. 219 ; 21 L. T. 178 105
—— *v.* Mousley (1848), 5 C. B. 533 275
Coxhead *v.* Richards (1846), 2 C. B. 569 ; 15 L. J. C. P. 278 ; 10 Jur. 987 ; 69 R. R. 530 125
Creagh *v.* Gamble (1888), 24 L. R. Ir. 458 267
Cresswell *v.* Hedges (1862), 31 L. J. Ex. 497 ; 10 W. R. 777 ; 1 H. & C. 421 ; 8 Jur. (N.S.) 767 275
Crossley & Sons, Limited *v.* Lightowler (1867), L. R. 2 Ch. 478 ; 36 L. J. Ch. 584 ; 16 L. T. 438 ; 15 W. R. 801 235, 238, 251
Crowhurst *v.* Amersham Burial Board (1878), 4 Ex. D. 5 ; 48 L. J. Ex. 109 ; 39 L. T. 355 ; 27 W. R. 95 ... ... 190, 194
Crump *v.* Lambert (1867), L. R. 3 Eq. 409 ; 15 L. T. 600 ; 15 W. R. 417 230
Cubitt *v.* Porter (1828), 6 L. J. (o.s.) K. B. 306 ; 8 B. & C. 257 ; 2 Man. & R. 267 ; 32 R. R. 374 276
Cuenod *v.* Leslie, [1909] 1 K. B. 880 ; 78 L. J. K. B. 695 ; 100 L. T. 675 ; 25 T. L. R. 374 ; 53 Sol. J. 340 [C. A.] 49, 50

D.

Dakhyl *v.* Labouchere, (1907) [1908] 2 K. B. 325 n. ; 77 L. J. K. B. 728 ; 96 L. T. 399 ; 23 T. L. R. 364 ... ... 117, 119
Dalton *v.* Angus (1881), 6 App. Cas. 740 ; 46 J. P. 132 ; 50 L. J. Q. B. 689 ; 44 L. T. 844 ; 30 W. R. 191 ... 66, 245, 246
——— *v.* South-Eastern Rail Co. (1858), 4 C. B. (N.S.) 296 ; 27 L. J. C. P. 227 ; 6 W. R. 574 ; 4 Jur. (N.S.) 711 73
Dand *v.* Sexton (1789), 3 T. R. 37 285
Daniel *v.* Ferguson, [1891] 2 Ch. 27 ; 39 W. R. 599 [C. A.] ... 85
——— *v.* Metropolitan Rail. Co. (1871), 5 H. L. 45 ; 3 C. P. 216, 591 167
Danube II, The, [1921] P. 183 ; [1921] W. N. 79 ; 65 Sol. J. 396 ; 37 T. L. R. 421 ; 125 L. T. 156 ; 90 L. J. P. 314 ... ... 92, 97
Darley Main Colliery Co. *v.* Mitchell (1886), 11 App. Cas. 127 ; 51 J. P. 148 ; 55 L. J. Q. B. 529 ; 54 L. T. 882 ... 81, 92, 94
Dauncey *v.* Holloway, [1901] 2 K. B. 441 ; 70 L. J. K. B. 695 ; 84 L. T. 649 ; 49 W. R. 546 [C. A.] 111
Davey *v.* London and South Western Rail. Co. (1883), 12 Q. B. D. 70 ; 48 J. P. 279 ; 53 L. J. Q. B. 58 ; 49 L. T. 739 [C. A.] 184
Davies *v.* Mann (1842), 12 L. J. Ex. 10 ; 10 M. & W. 546 ; 6 Jur. 954 ; 62 R. R. 698 ... ... 181, 223
——— *v.* Owen (Thomas) & Co., [1919] 2 K. B. 39 ; 83 J. P. 193 ; 88 L. J. K. B. 887 ; 121 L. T. 156 ; 17 L. G. R. 407 185
——— *v.* Powell Duffryn Steam Coal Co., [1921] W. N. 161 ; 37 T. L. R. 607 ; 65 Sol. J. 567 [C. A.] 243
——— *v.* Snead (1870), L. R. 5 Q. B. 608 ; 39 L. J. Q. B. 202 ; 23 L. T. 126 125

PAGE
Davies *v.* Solomon (1871), L. R. 7 Q. B. 112 ; 41 L. J. Q. B. 10 ; 25 L. T. 799 ; 20 W. R. 167 108
——— *v.* Thomas, [1920] 2 Ch. 189 ; 84 J. P. 201 ; 89 L. J. Ch. 338 ; 123 L. T. 456 ; 36 T. L. R. 571 ; 64 Sol. J. 529 [C. A.] 11, 152
——— *v.* Williams (1847), 10 Q. B. 725 ; 16 L. J. Q. B. 369 ; 11 Jur. 750 ; 74 R. R. 491 144
——— *v.* ——— (1851), 16 Q. B. 546 ; 20 L. J. Q. B. 330 ; 15 Jur. 752 240
Davis *v.* Bromley Corporation, [1908] 1 K. B. 170 ; 71 J. P. 513 ; 77 L. J. K. B. 51 ; 97 L. T. 705 ; 24 T. L. R. 11 ; 5 L. G. R. 1229 [C. A.] 30
——— *v.* London and North Western Rail. Co. (1858), 7 W. R. 105 ; 4 Jur. (N.S.) 1303 81
——— *v.* Marrable, [1913] 2 Ch. 421 ; 82 L. J. Ch. 510 ; 109 L. T. 33 ; 29 T. L. R. 617 ; 57 Sol. J. 702 249
——— *v.* Russell (1829), 7 L. J. (O.S.) M. C. 52 ; 5 Bing. 354 ; 2 M. & P. 590 ; 30 R. R. 637 267
——— *v.* Shepstone (1886), 11 App. Cas. 187 ; 50 J. P. 709 ; 55 L. J. P. C. 51 ; 55 L. T. 1 ; 34 W. R. 722 128
Dawkins *v.* Paulet (Lord) (1869) L. R. 5 Q. B. 94 ; 39 L. J. Q. B. 53 ; 21 L. T. 584 ; 9 B. & S. 768 ; 18 W. R. 336 ... 121
——— *v.* Rokeby (Lord) (1875), L. R. 7 H. L. 744 ; 45 L. J. Q. B. 8 ; 33 L. T. 196 ; 23 W. R. 931 ... ... 18, 122
Dawson *v.* Bingley Urban District Council, [1911] 2 K. B. 149 ; 75 J. P. 289 ; 80 L. J. K. B. 842 ; 104 L. T. 659 ; 27 T. L. R. 308 ; 55 Sol. J. 346 ; 9 L. G. R. 502 [C. A.] 28
Dean *v.* Peel (1804), 5 East, 45 ; 7 R. R. 653 ; 1 Smith, 333 ... 146
De Crespigny *v.* Wellesley (1829), 7 L. J. (O.S.) C. P. 100 ; 5 Bing. 392 ; 30 R. R. 665 ; 12 M. & P. 695 116
Degg *v.* Midland Rail. Co. (1857), 26 L. J. Ex. 171 ; 1 H. & N. 773 ; 3 Jur. (N.S.) 395 ; 5 W. R. 364 209
De Keyser's Royal Hotel, Limited *v.* Spicer Brothers, Limited, and Minter (1914), 30 T. L. R. 257 ... ... 232, 234
Delaney *v.* Fox (1857), 2 C. B. (N.S.) 768 ; 26 L. J. C. P. 248 ... 279
Derry *v.* Handley (1867), 16 L. T. (N.S.) 263 ... ... 108, 115
——— *v.* Peek (1889), 14 App. Cas. 337 ; 54 J. P. 148 ; 58 L. J. Ch. 864 ; 61 L. T. 265 ; 38 W. R. 33 ; 1 Mag. 292 157, 158, 161
De Wahl *v.* Braune (1856), 25 L. J. Ex. 343 ; 1 H. & N. 178 ... 41
Diana, The (1862), Lush. 541 39
Dickinson *v.* North Eastern Rail. Co. (1863), 33 L. J. Ex. 91 ; 2 H. & C. 735 ; 9 L. T. 299 ; 12 W. R. 52 72
Digby *v.* Financial News, Limited, [1907] 1 K. B. 502 ; 76 L. J. K. B. 321 ; 96 L. T. 172 ; 23 T. L. R. 117 [C. A.] ... 118
——— *v.* Thompson (1833), 2 L. J. K. B. 140 ; 4 B. & Ad. 821 ; 1 N. & M. 485 ; 38 R. R. 378 102
Dillon *v.* Balfour (1887), 20 L. R. Ir. 600 120
Dimes *v.* Petley (1850), 15 Q. B. 276 ; 19 L. J. Q. B. 449 ; 14 Jur. 1132... 223
Dixon *v.* Bell (1816), 5 M. & S. 198 ; 1 Stark. 287 ; 17 R. R. 308 173
——— *v.* Smith (1860), 5 H. & N. 450 ; 29 L. J. Ex. 125 108
Dobell *v.* Stevens (1825), 3 L. J. (O.S.) K. B. 89 ; 3 B. & C. 623 ; 5 D. & R. 490 ; 27 R. R. 441 159
Dobson *v.* Horsley, [1915] 1 K. B. 634; 84 L. J. K. B. 399 ; 112 L. T. 101 ; 31 T. L. R. 12 [C. A.] 169
Doe *d.* Carter *v.* Barnard (1849), 13 Q. B. 945 279

PAGE

Doe *d.* Johnson *v.* Baytup (1835), 4 L. J. (N.S.) K. B. 263 ; 3 A. & E. 188 ; 4 M. & N. 837 ; 1 H. & W. 270 ; 42 R. R. 359 279
—— *d.* Knight *v.* Smythe (1815), 4 M. & S. 347 279
—— *d.* Marriott *v.* Edwards (1834), 5 B. & Ad. 1065 ; 6 Car. & P. 208 ; 3 N. & M. 193 279
—— *d.* Oliver *v.* Powell (1834), 1 A. & E. 531 ; 3 H. & M. 616 279
—— *d.* Smith *v.* Webber (1834), 3 L. J. (N.S.) K. B. 148 ; 1 A. & E. 119 ; 3 H. & N. 746 ; 40 R. R. 268 278
Dominion Natural Gas Co. *v.* Collins and Perkins, [1909] A. C. 640 ; 101 L. T. 359 ; 25 T. L. R. 831 ... ... 37, 174
Donald *v.* Suckling (1866), L. R. 1 Q. B. 585 ; 35 L. J. Q. B. 232 ; 14 L. T. 772 ; 15 W. R. 13 ; 12 Jur. (N.S.) 795 ; 7 B. & S. 783 292
Donovan *v.* Laing, Wharton and Down Construction Syndicate, [1893] 1 Q. B. 629 ; 57 J. P. 583 ; 63 L. J. Q. B. 25 ; 68 L. T. 512 ; 41 W. R. 455 ; 4 R. 317 [C. A.] 54, 57
Doorman *v.* Jenkins (1834), 2 A. & E. 256 ; 4 N. & M. 170 ; 4 L. J. K. B. 29 ; 41 R. R. 429 ... ... 37, 164
Doswell *v.* Impey (1823), 1 B. & C. 169 17
Dovaston *v.* Payne (1795), 2 H. Bl. 527 ; 2 Sm. L. C. 160 ; 3 R. R. 497 272
Dovey *v.* Corey, [1901] A. C. 477 ; 70 L. J. Ch. 753 ; 85 L. T. 257 ; 50 W. R. 65 ; 17 T. L. R. 732 ; 8 Manson, 346 161
Doyley *v.* Roberts (1837), 3 Bing. N. C. 835 ; 5 Scott, 40 ; 3 Hodg. 154 ; 6 L. J. C. P. 279 111
Dublin, Wicklow and Wexford Rail. Co. *v.* Slattery (1878), 3 App. Cas. 1155 ; 39 L. T. 365 ; 27 W. R. 191 ... ... 166, 183
Duck *v.* Mayeu, [1892] 2 Q. B. 511 ; 57 J. P. 23 ; 62 L. J. Q. B. 69 ; 67 L. T. 547 ; 41 W. R. 56 ; 4 R. 38 [C. A.] 46
Duff Development Co. *v.* Government of Kelantan, [1924] A. C. 797 ; [1924] W. N. 156 ; 93 L. J. Ch. 343 ; 68 Sol. J. 559 ; 40 T. L. R. 566 ; 131 L. T. 676 43
Dunster *v.* Hollis, [1918] 2 K. B. 795 ... ... 169, 227
Dyer *v.* Munday, [1895] 1 Q. B. 742 ; 59 J. P. 276 ; 64 L. J. Q. B. 448 ; 72 L. T. 448 ; 43 W. R. 440 ; 14 R. 306 [C. A.] ... 60

E.

Eager *v.* Grimwood (1847), 16 L. J. Ex. 236 ; 1 Ex. 61 ; 74 R. R. 584 148
Earl *v.* Lubbock, [1905] 1 K. B. 253 ; 74 L. J. K. B. 121 ; 53 W. R. 145 [C. A.] 36
Earle *v.* Kingscote, [1900] 1 Ch. 203 49
East London Harbour Board *v.* Caledonia Landing, Shipping and Salvage Co., Limited, [1908] A. C. 271 ; 77 L. J. C. P. 111 ; 98 L. T. 682 ; 24 T. L. R. 516 55
Eastern and South African Telegraph Co. *v.* Cape Town Tramways Co., [1902] A. C. 381 ; 71 L. J. P. C. 122 ; 86 L. T. 457 ; 50 W. R. 657 190
Eastern Construction Co., Limited *v.* National Trust Co., Limited, [1914] A. C. 197 ; 83 L. J. P. C. 122 ; 110 L. T. 321 ... 53, 291
Eastwood *v.* Holmes (1858), 1 F. & F. 347 112

PAGE

Eaton *v.* Johns (1842), 1 Dowl. (N.S.) 602 105
Edge (William) & Sons, Limited *v.* Niccolls (William) & Sons, Limited, [1911] A. C. 693 ; 80 L. J. Ch. 745 ; 105 L. T. 459 ; 27 T. L. R. 555 ; 65 Sol. J. 737 ; 28 R. P. C. 582 155
Edgington *v.* Fitzmaurice (1885), 29 Ch. D. 459 ; 50 J. P. 52 ; 55 L. J. Ch. 650 ; 53 L. T. 369 ; 33 W. R. 911 [C. A.] ... 159
Edmondson *v.* Birch & Co., Limited, and Horner. [1907] 1 K. B. 371 ; 76 L. J. K. B. 346 ; 96 L. T. 413 ; 23 T. L. R. 234 [C. A.] 114, 127
Edwards *v.* Metropolitan Water Board. [1922] 1 K. B. 291 ; [1921] W. N. 354 ; 20 L. G. R. 7 ; 86 J. P. 33 ; 38 T. L. R. 153 ; 66 Sol. J. 195 ; 91 L. J. K. B. 210 ; 126 L. T. 300 97
——— *v.* Midland Rail. Co. (1880), 6 Q. B. D. 287 ; 45 J. P. 374 ; 50 L. J. Q. B. 281 ; 43 L. T. 694 ; 29 W. R. 609 ... 45
——— *v.* Porter, [1925] A. C. 1 ... ... 49, 50
Elliott *v.* Boynton, [1924] 1 Ch. 236 [C.A.] ; [1923] W. N. 338 ; 130 L. T. 497 ; 68 Sol. J. 236 ; 40 T. L. R. 180 ; 93 L. J. Ch. 122 275
——— *v.* Roberts (C. P.) & Co., Limited, [1916] 2 K. B. 518 ; 85 L. J. K. B. 1689 ; 115 L. T. 255 ; 32 T. L. R. 478 ; 14 L. G. R. 942 [C. A.] 168
Ellis *v.* Loftus Iron Co. (1874), L. R. 10 C. P. 10 ; 44 L. J. C. P. 24 ; 31 L. T. 483 ; 23 W. R. 246 ... ... 198, 271
—— *v.* Sheffield Gas Consumers Co. (1853), 2 El. & Bl. 767 ; 23 L. J. Q. B. 42 ; 24 W. R. 19 ; 2 C. L. R. 249 ; 18 Jur. 146 62, 65
Elwood *v.* Bullock (1844), 6 Q. B. 383 ; 13 L. J. Q. B. 330 ; 8 Jur. 1044 222
Embrey *v.* Owen (1851), 20 L. J. Ex. 212 ; 6 Ex. 353 ; 15 Jur. 633 : 250, 251
Emmens *v.* Pottle (1885), 16 Q. B. D. 354 ; 50 J. P. 228 ; 55 L. J. Q. B. 51 ; 53 L. T. 808 ; 34 W. R. 116 [C. A.] ... 44, 114, 116
Engelhart *v.* Farrant & Co., [1897] 1 Q. B. 240 ; 66 L. J. Q. B. 122 : 75 L. T. 617 ; 45 W. R. 179 [C. A.] 15, 60, 61, 183
Entick *v.* Carrington (1765), 19 St. Tr. 1066 ... ... 4, 7
Evans *v.* Harries (1856), 26 L. J. Ex. 31 ; 1 H. & N. 251 ... 108
—— *v.* Walton (1867), L. R. 2 C. P. 615 ; 36 L. J. C. P. 307 ; 17 L. T. 92 ; 15 W. R. 1062 144
Everett *v.* Griffiths, [1921] 1 A. C. 631 ; [1921] W. N. 105 ; 19 L. G. R. 283 ; 85 J. P. 149 ; 37 T. L. R. 481 ; 65 Sol. J. 395 ; 125 L. T. 230 ; 90 L. J. K. B. 737 262
Every *v.* Smith (1857), 26 L. J. Ex. 344 276
Ewing *v.* Buttercup Margarine Co., [1917] 2 Ch. 1 ; 86 L. J. Ch. 441 ; 117 L. T. 67 ; 33 T. L. R. 321 ; 61 Sol. J. 443 ; 34 R. P. C. 232 [C. A.] 154

F.

Fairman *v.* Perpetual Investment Building Society. [1923] A. C. 74 ; [1922] W. N. 304 ; 92 L. J. K. B. 50 ; 39 T. L. R. 54 ; 87 J. P. 21 ; 128 L. T. 386 ... ... 169, 226
Faldo *v.* Ridge (1604), Yelv. 74 272
Falvey *v.* Stanford (1874), L. R. 10 Q. B. 54 ; 44 L. J. Q. B. 7 ; 31 L. T. 677 ; 23 W. R. 162 75
Fenna *v.* Clare & Co., [1895] 1 Q. B. 199 ; 64 L. J. Q. B. 238 ; 15 R. 220 221

PAGE

Fenton *v.* Thorley & Co., Limited, [1903] A. C. 443 ; 72 L. J. K. B. 787 ; 89 L. T. 314 ; 52 W. R. 81 ; 19 T. L. R. 684 214
Fenwick *v.* East London Rail. Co. (1875), L. R. 20 Eq. 544 ; 44 L. J. Ch. 602 ; 23 W. R. 901 87
Filburn *v.* People's Palace and Aquarium Co. (1890), 25 Q. B. D. 258 ; 55 J. P. 181 ; 59 L. J. Q. B. 471 ; 38 W. R. 706 [C. A.]... 194, 195, 197
Filliter *v.* Phippard (1847), 11 Q. B. 347 ; 17 L. J. Q. B. 89 ; 12 Jur. 202 199
Findon *v.* Parker (1843), 11 M. & W. 675 140
Firth *v.* Bowling Iron Co. (1878), 3 C. P. D. 254 ; 47 L. J. C. P. 358 ; 38 L. T. 568 ; 26 W. R. 558 190
Fisher *v.* Prowse (1862), 2 B. & S. 770 ; 31 L. J. Q. B. 212 ; 6 L. T. 711 ; 8 Jur. (N.S.) 1208 220
Fitzgerald *v.* Clarke (W. G.) & Son, [1908] 2 K. B. 796 ; 77 L. J. K. B. 1018 ; 99 L. T. 101 [C. A.] 214
Fitzjohn *v.* Mackinder (1861), 9 C. B. (N. S.) 505 ; 30 L. J. C. P. 257 ; 4 L. T. 149 ; 9 W. R. 477 ; 7 Jur. (N.S.) 1283 132
Fletcher *v.* Jubb, Booth & Helliwell, [1920] 1 K. B. 275 ; [1919] W. N. 266 ; 89 L. J. K. B. 236 ; 122 L. T. 258 ; 36 T. L. R. 19 165
——— *v.* Rylands (1866), L. R. 1 Ex. 265 ; affirmed *sub nom.* Rylands *v.* Fletcher (1868), L. R. 3 H. L. 330 ; 37 L. J. Ex. 161 ; 19 L. T. 220 ... 189, 190, 191, 196
——— *v.* Smith (1877), 2 App. Cas. 781 ; 47 L. J. Ex. 4 ; 37 L. T. 367 ; 26 W. R. 83 193
Flight *v.* Thomas (1840), 10 L. J. Ex. 529 ; 11 A. & E. 688 ; 3 P. & D. 442 ; 8 Cl. & F. 231 ; 52 R. R. 468 ; 5 Jur. 811 248
Foreman *v.* Canterbury Corporation (1871), L. R. 6 Q. B. 214 ; 40 L. J. Q. B. 138 ; 24 L. T. 385 ; 19 W. R. 719 31
Fores *v.* Wilson (1791), 1 Peake, 55 ; 3 R. R. 652 145
Foster *v.* Warblington Urban Council, [1906] 1 K. B. 648 ; 70 J. P. 233 ; 75 L. J. K. B. 514 ; 94 L. T. 876 ; 54 W. R. 575 ; 22 T. L. R. 421 ; 4 L. G. R. 735 [C. A.] 190
Foulger *v.* Newcomb (1867), L. R. 2 Ex. 327 ; 36 L. J. Ex. 169 ; 16 L. T. 595 ; 15 W. R. 1181 107
Fowler *v.* Hollins (1872), L. R. 7 Q. B. 616 ; 41 L. J. Q. B. 277 ; 27 L. T. 168 ; 20 W. R. 868 286
——— *v.* Kibble, [1922] 1 Ch. 7 [C. A.] ; [1921] W. N. 297 ; 126 L. T. 269 ; 38 T. L. R. 20 ; 66 Sol. J. 36 (5) ; 91 L. J. Ch. 242 ... ... 27, 28, 150
France *v.* Gaudet (1871), L. R. 6 Q. B. 199 ; 40 L. J. Q. B. 121 ; 19 W. R. 622 77
Francis *v.* Cockrell (1870), L. R. 5 C. P. 184 171
Fraser *v.* Fear, [1912] W. N. 227 ; 107 L. T. 423 ; 57 Sol. J. 29 [C. A.] 27
Fritz *v.* Hobson (1880), 14 Ch. D. 542 ; 49 L. J. Ch. 735 ; 42 L. T. 677 ; 28 W. R. 722 ... ... 6, 223
Fry *v.* Cheltenham Corporation [C. A.] 5 B. W. C. C. 162 ; 81 L. J. K. B. 41 ; [1912] W. C. Rep. 103 ; 10 L. G. R. 1 ; 105 L. T. 495 ; [1911] W. N. 199 ; 76 J. P. 89 ; 28 T. L. R. 16 ; 56 Sol. J. 33 ... ... 97, 217
Fryer *v.* Kinnersley (1863), 15 C. B. (N.S.) 422 ; 33 L. J. C. P. 96 ; 9 L. T. 415 ; 12 W. R. 155 ; 10 Jur. (N.S.) 441 125
Fulton *v.* Norton, [1908] A. C. 451 ; 99 L. T. 455 ; 24 T. L. R. 794 27

G.

PAGE

Gallwey *v.* Marshall (1853), 23 L. J. Ex. 78 ; 9 Ex. 295 ; 2 C. L. R. 399 ; 2 W. R. 106 110
Gandy *v.* Jubber (1864), 5 B. & S. 78 ; 33 L. J. Q. B. 151 ; 9 L. T. 800 ; 12 W. R. 526 ; 10 Jur. (N.S.) 652... ... ... 224, 225
Gane *v.* Norton Hill Colliery Co., [1909] 2 K. B. 539 ; 78 L. J. K. B. 921 ; 100 L. T. 979 ; 25 T. L. R. 640 [C. A.] 215
Ganley *v.* Ledwidge (1884), 14 L. R. Ir. 31 [C. A.] 287
Gardener *v.* Slade (1849), 13 Q. B. 796 ; 18 L. J. Q. B. 334 ; 13 Jur. 826 125
Gardner *v.* Hodgson's Kingston Brewery Co., [1903] A. C. 229 ; 72 L. J. Ch. 558 ; 88 L. T. 698 ; 52 W. R. 17 ; 19 T. L. R. 458 237, 238
Gargara, The, [1919] P. 95 43
Garret *v.* Taylor (1620), Cro. Jac. 567 151
Gautret *v.* Egerton (1867), L. R. 2 C. P. 371 ; 36 L. J. C. P. 191 ; 16 L. T. 17 ; 15 W. R. 638 ... ... 168, 170, 172
Gayler & Pope *v.* B. Davies & Son, [1924] 2 K. B. 75 ; [1924] W. N. 158 ; 93 L. J. K. B. 702 ; 68 Sol. J. 685 ; 40 T. L. R. 591 ; 131 L. T. 507 165
Geddis *v.* Bann Reservoir (Proprietors) (1878), 3 App. Cas. 430 21, 31
Gee *v.* Pritchard (1818), 2 Swan. 402 ; 19 R. R. 87 88
Geipel *v.* Peach, [1917] 2 Ch. 108 ; 86 L. J. Ch. 745 ; 117 L. T. 84 ; 61 Sol. J. 460 ... ... 67, 161
George and Richard, The (1871), L. R. 3 Ad. & Ec. 466 ; 24 L. T. 717 ... ... 42, 72, 186
George *v.* Skivington (1869), L. R. 5 Ex. 1 ; 39 L. J. Ex. 8 ; 21 L. T. 495 ; 18 W. R. 118 176
Gerrard *v.* Crowe, [1921] 1 A. C. 395 ; 90 L. J. P. C. 42 ; 124 L. T. 486 193
Gibbs *v.* Guild (1882), 9 Q. B. D. 59 ; 51 L. J. Q. B. 313 ; 46 L. T. 248 ; 30 W. R. 591 92
Gibraltar Sanitary Commissioners *v.* Orfila (1890), 15 App. Cas. 400 ; 59 L. J. P. C. 95 ; 63 L. T. 58 30
Giles *v.* Walker (1890), 24 Q. B. D. 656 ; 54 J. P. 599 ; 59 L. J. Q. B. 416 ; 62 L. T. 933 ; 38 W. R. 782 194
Gilpin *v.* Fowler (1854), 9 Ex. 615 ; 23 L. J. Ex. 152 ; 2 W. R. 272 ; 18 Jur. 292 126
Gladwell *v.* Steggall (1839), 5 Bing. N. C. 733 ... ... 35, 165
Glasgow Corporation *v.* Lorimer, [1911] A. C. 209 ; 104 L. T. 354 ; 55 Sol. J. 363 ; 48 Sc. L. R. 399 ... 60
——————— *v.* Taylor, [1922] A. C. 44 ; [1921] W. N. 333 ; 126 L. T. 262 ; 38 T. L. R. 102 ; 91 L. J. P. C. 49 ; 20 L. G. R. 205 ; 86 J. P. 89 ... ... 177, 182
Glasier *v.* Rolls (1889), 62 L. T. 133 [C. A.] 158
Glyn *v.* Howell, [1909] 1 Ch. 666 ; 78 L. J. Ch. 391 ; 100 L. T. 324 ; 53 Sol. J. 269 274
Glyn, Mills & Co. *v.* East and West India Docks Co. (1882), 7 App. Cas. 591 ; 52 L. J. Q. B. 146 ; 47 L. T. 309 ; 31 W. R. 201... 286
Goff *v.* Great Northern Rail. Co. (1861), 3 El. & El. 672 ; 30 L. J. Q. B. 148 ; 3 L. T. 850 ; 7 Jur. (N.S.) 286 58
Goffin *v.* Donnelly (1881), 6 Q. B. D. 307 ; 45 J. P. 439 ; 50 L. J. Q. B. 303 ; 44 L. T. 141 ; 29 W. R. 440 121
Goodtitle *v.* Alker (1757), 1 Burr. 133 ; 1 Ld. Ken. 427 275
Goodwyn *v.* Cheveley (1859), 28 L. J. Ex. 298 ; 4 H. & N. 631 ; 7 W. R. 631 198

PAGE

Gorris *v.* Scott (1874), L. R. 9 Ex. 125 ; 43 L. J. Ex. 92 ; 30 L. T. 431 ; 22 W. R. 575 28
Grainger *v.* Hill (1838), 7 L. J. C. P. 85 ; 4 Bing. N. C. 212 ; 5 Scott, 561 259
Granby (Marquis) *v.* Bakewell U.D.C., [1923] 21 L. G. R. 329 ; 87 J. P. 105 76
Grand Trunk Railway of Canada *v.* Barnett, [1911] A. C. 361 ; 104 L. T. 362 ; 27 T. L. R. 359 ... ... 166, 167
Grand Trunk Rail. Co. of Canada *v.* Jennings (1888), 13 App. Cas. 800 ; 58 L. J. P. C. 1 ; 59 L. T. 679 ; 37 W. R. 403 72
Great Central Rail. Co. *v.* Hewlett, [1916] 2 A. C. 511 ; 85 L. J. K. B. 1705 ; 115 L. T. 349 ; 80 J. P. 361 ; 14 L. G. R. 1015 ; [1916] W. N. 312 ; 32 T. L. R. 707 ; 60 Sol. J. 678 21
Great Northern Rail. Co. *v.* L. E. P. Transport and Depository, [1922] 2 K. B. 742 [C. A.] ; 91 L. J. K. B. 807 ; 127 L. T. 664 ; 38 T. L. R. 711 ... ... 178, 289, 293
Green *v.* Duckett (1883), 11 Q. B. D. 275 ; 47 J. P. 487 ; 52 L. J. Q. B. 435 ; 48 L. T. 677 ; 31 W. R. 607 277
Greenock Corporation *v.* Caledonian Rail. Co., Greenock Corporation *v.* Glasgow and South Western Rail. Co., [1917] A. C. 556 ; 81 J. P. 269 ; 86 L. J. P. C. 185 ; 117 L. T. 483 ; 33 T. L. R. 531 ; 62 Sol. J. 8 ; 54 Sc. L. R. 600 ; 15 L. G. R. 749 191
Greenslade *v.* Halliday (1830), 8 L. J. (o.s.) C. P. 124 ; 6 Bing. 379 ; 4 Moo. & P. 71 ; 53 R. R. 241 239
Greers Ltd *v.* Pearman & Corder, [1922] 39 R. P. C. 406 [C. A.] ... 130
Gregory *v.* Brunswick (Duke of) (1884), 6 M. & Cr. 205, 953 ; 1 Dow. & L. 518 ; 6 Scott (N.R.) 809 ; 1 Car. & K. 24 ... 153
——— *v.* Piper (1829), 9 B. & C. 591 ; 4 Man. & R. 500 ; 33 R. R. 268 271
——— *v.* Williams (1844), 1 C. & K. 568 80
Greville *v.* Chapman (1844), 5 Q. B. 731 ; 13 L. J. Q. B. 172 ; D. & M. 553 ; 8 Jur. 189 105
Greyvensteyn *v.* Hattingh, [1911] A. C. 355 ; 80 L. J. P. C. 158 ; 104 L. T. 360 ; 27 T. L. R. 358 194
Griffin *v.* Coleman (1859), 28 L. J. Ex. 134 ; 4 H. & N. 265 266, 267
Griffiths *v.* Benn (1911), 27 T. L. R. 346 [C. A.] 130
——— *v.* Dudley (Earl) (1882), 9 Q. B. D. 357 ; 51 L. J. Q. B. 543 ; 47 L. T. 10 ; 30 W. R. 797 ... ... 71, 211
——— *v.* Teetgen (1854), 15 C. B. 344 ; 24 L. J. C. P. 35 ; 3 W. R. 11 ; 1 Jur. (N.S.) 426 146
Grinham *v.* Willey (1859), 28 L. J. Ex. 242 ; 4 H. & N. 496 ; 7 W. R. 463 ; 5 Jur. (N.S.) 444 264
Groves *v.* Wimborne (Lord), [1898] 2 Q. B. 402 ; 67 L. J. Q. B. 862 ; 79 L. T. 284 ; 47 W. R. 87 ; 14 T. L. R. 493 [C. A.] ... 28, 205, 208
Gwilliam *v.* Twist, [1895] 2 Q. B. 84 ; 59 J. P. 484 ; 64 L. J. Q. B. 474 ; 72 L. T. 579 ; 43 W. R. 566 ; 14 R. 461 [C. A.] ... 61
Gwinnell *v.* Eamer (1875), L. R. 10 C. P. 658 ; 32 L. T. 835 224, 226

H.

Haddrick *v.* Heslop (1848), 12 Q. B. 267 ; 17 L. J. Q. B. 313 ; 12 Jur. 600 136
Haggard *v.* Pelicier Frères, [1892] A. C. 61 ; 61 L. J. P. C. 19 ; 65 L. T. 769 ... ... 18, 19

PAGE
Halliday *v.* Holgate (1868), L. R. 3 Ex. 299 ; 37 L. J. Ex. 174 ; 18 L. T. 656 ; 17 W. R. 13 292
Hambrook *v.* Stokes, [1925] 1 K. B. 141 [C. A.] 14
Hamilton *v.* Long, [1903] 2 I. R. 407 ; affirmed [1905] 2 I. R. 552 [C. A.] 145
Hamlyn *v.* Houston, [1903] 1 K. B. 81 ; 72 L. J. K. B. 72 ; 87 L. T. 500 ; 19 T. L. R. 66 [C. A.] 51
Hammack *v.* White (1862), 11 C. B. (N.S.) 588 ; 31 L. J. C. P. 129 ; 5 L. T. 676 ; 8 Jur. (N.S.) 796 ; 10 W. R. 230 165
Hammersmith, etc. Rail. Co. *v.* Brand (1869), L. R. 4 H. L. 171 ; 38 L. J. Q. B. 265 ; 21 L. T. 238 ; 18 W. R. 12 ... ...21, 22
Hanbury *v.* Hanbury (1892), 8 T. L. R. 559 [C. A.] 45
Hancock *v.* Somes (1859), 1 E. & E. 795 ; 28 L. J. M. C. 196 ; 7 W. R. 422 ; 5 Jur. (N.S.) 983 ; 8 Cox C. C. 172 270
Hannam *v.* Mockett (1824), 2 L. J. (O.S.) K. B. 183 ; 2 B. & C. 934 ; 4 D. & R. 518 ; 26 R. R. 591 277
Hardaker *v.* Idle District Council, [1896] 1 Q. B. 335 ; 60 J. P. 196 ; 65 L. J. Q. B. 363 ; 74 L. T. 69 ; 44 W. R. 323 [C. A.] ... 65
Hardy *v.* Central London Rail. Co., [1920] 3 K. B. 459 ; 89 L. J. K. B. 1187 ; 124 L. T. 136 ; 36 T. L. R. 843 ; 64 Sol. J. 683 [C. A.] 172, 177
Hardy *v.* Ryle (1829), 7 L. J. (O.S.) M. C. 118 ; 9 B. & C. 603 ; 4 M. & R. 295 95
Hargreave *v.* Spink, [1892] 1 Q. B. 25 ; 61 L. J. Q. B. 318 ; 65 L. T. 650 ; 40 W. R. 254 287
Hargroves, Aronson & Co. *v.* Hartopp, [1905] 1 K. B. 472 ; 74 L. J. K. B. 233 ; 53 W. R. 262 ; 21 T. L. R. 226 169
Harnett *v.* Bond, [1924] 2 K. B. 517 [C. A.] ; 93 L. J. K. B. 946 ; 131 L. T. 782 ; 68 Sol. J. 770 ; 40 T. L. R. 653 ... 15, 262
Harrington (Earl) *v.* Derby Corporation, [1905] 1 Ch. 205 ; 69 J. P. 62 ; 74 L. J. Ch. 219 ; 92 L. T. 153 ... ...88, 97
Harris *v.* Brisco (1886), 17 Q. B. D. 504 ; 55 L. J. Q. B. 423 ; 55 L. T. 14 ; 34 W. R. 729 [C. A.] 140
—— *v.* Butler (1837), 6 L. J. Ex. 133 ; 2 M. & W. 542 ; M. & H. 117 ; 1 Jur. 608 ; 46 R. R. 695 144
—— *v.* James (1876), 45 L. J. Q. B. 545 ; 35 L. T. 240 ... 224
—— *v.* Mobbs (1878), 3 Ex. D. 268 ; 39 L. T. 164 ; 27 W. R. 154 13
—— *v.* Perry & Co., [1903] 2 K. B. 219 ; 72 L. J. K. B. 725 ; 89 L. T. 174 [C. A.] 38, 166
Harrison *v.* Rutland (Duke), [1893] 1 Q. B. 142 ; 57 J. P. 278 ; 62 L. J. Q. B. 117 ; 68 L. T. 35 ; 41 W. R. 322 ; 4 R. 155 [C. A.] 272
—— *v.* Southwark and Vauxhall Water Co., [1891] 2 Ch. 409 ; 60 L. J. Ch. 630 ; 64 L. T. 864 87
—— *v.* Thornborough (1712), 10 Mod. Rep. 196 112
Harrold *v.* Watney, [1898] 2 Q. B. 320 ; 67 L. J. Q. B. 771 ; 78 L. T. 788 ; 46 W. R. 642 [C. A.] 182, 221
Hart *v.* Rogers, [1916] 1 K. B. 646 ; 85 L. J. K. B. 273 ; 114 L. T. 329 ; 32 T. L. R. 150 226
—— *v.* Wall (1877), 2 C. P. D. 146 ; 46 L. J. C. P. 227 ; 25 W. R. 373 113
Hartley *v.* Hindmarsh (1866), L. R. 1 C. P. 553 ; 35 L. J. M. C. 255 ; 14 L. T. 795 ; 14 W. R. 862 ; 1 H. & R. 607 ; 12 Jur. (N.S.) 502 270
Harvey *v.* Mayne (1872), 6 Ir. C. L. 417 ... ... 259, 261

PAGE
Harvey *v.* Pocock (1843), 11 M. & W. 43 290
Hastings Corporation *v.* Ivall (1874), L.R. 19 Eq. 558 ; 22 W.R. 724 : 275
Hatchard *v.* Mège (1887), 18 Q. B. D. 771 ; 51 J. P. 277 ; 56 L. J. Q. B. 397 ; 56 L. T. 662 ; 35 W. R. 576 68
Haycroft *v.* Creasy (1801), 2 East, 92 ; 6 R. R. 380 44
Hayward *v.* Drury Lane Theatre, Limited, and Moss Empires, Limited, [1917] 2 K. B. 899 ; 87 L. J. K. B. 18 ; 117 L. T. 523 ; 33 T. L. R. 557 ; 61 Sol. J. 665 [C. A.]... 209
Head *v.* Briscoe (1833), 5 C. & P. 484 ; 38 R. R. 841 50
Healey *v.* Healey, [1915] 1 K. B. 938 ; 84 L. J. K. B. 1454 ; 113 L. T. 694 ; [1915] W. N. 103 41
Heasmer *v.* Pickfords, Limited (1920), 36 T. L. R. 818 204
Heath's Garage, Limited *v.* Hodges, [1916] 2 K. B. 370 ; 80 J. P. 321 ; 85 L. J. K. B. 1289 ; 115 L. T. 129 ; 32 T. L. R. 570 ; 60 Sol. J. 554 ; 14 L. G. R. 911 [C. A.] 28
Heaven *v.* Pender (1883), 11 Q. B. D. 503 ; 47 J. P. 709 ; 52 L. J. Q. B. 702 ; 49 L. T. 357 [C. A.] 164, 174, 176
Hebditch *v.* MacIlwaine, [1894] 2 Q. B. 54 ; 58 J. P. 620 ; 63 L. J. Q. B. 587 ; 70 L. T. 826 ; 42 W. R. 422 ; 9 R. 452 127
Hedges *v.* Tagg (1872), L. R. 7 Ex. 283 ; 41 L. J. Ex. 169 ; 20 W. R. 976 ... ... 144, 145
Hedley *v.* Pinkney & Sons Steamship Co., [1892] 1 Q. B. 58 ; 56 J. P. 308 ; 61 L. J. Q. B. 179 ; 66 L. T. 71 ; 40 W. R. 113 ; 7 Asp. M. C. 135 [C. A.] 206
Hellwig *v.* Mitchell, [1910] 1 K. B. 609 ; 79 L. J. K. B. 270 ; 102 L. T. 110 ; 26 T. L. R. 244 ... ... 107, 109
Heming *v.* Power (1842), 10 M. & W. 564 ; 6 Jur. 858 ; 62 R. R. 705 109
Hemmings *v.* Stoke Poges Golf Club, [1920] 1 K. B. 720 ; 89 L. J. K. B. 744 ; 122 L. T. 479 ; 36 T. L. R. 77 ; 64 Sol. J. 131 [C. A.] 261, 273
Henderson *v.* Preston (1888), 21 Q. B. D. 362 ; 52 J. P. 820 ; 57 L. J. Q. B. 607 ; 36 W. R. 834 [C. A.] 20
Henderson & Co. *v.* Williams, [1895] 1 Q. B. 521 ; 64 L. J. Q. B. 308 ; 72 L. T. 98 ; 43 W. R. 274 [C. A.] 77
Hermann Loog *v.* Bean (1884), 26 Ch. D. 306 ; 48 J. P. 708 ; 53 L. J. Ch. 1128 ; 51 L. T. 442 ; 32 W. R. 994 [C. A.] ... 88
Heslop *v.* Chapman (1853), 23 L. J. Q. B. 49 ; 18 Jur. 348 ; 2 W. R. 74 134
Hewlett *v.* Cruchley (1813), 5 Taunt. 283 135
Hickman *v.* Maisey, [1900] 1 Q. B. 752 ; 69 L. J. Q. B. 511 ; 82 L. T. 321 ; 48 W. R. 385 [C. A.] 272
Hicks *v.* Faulkner (1882), 8 Q. B. D. 167 ; 51 L. J. Q. B. 268 ; 30 W. R. 545 137
Hillyer *v.* St. Bartholomew's Hospital (Governors), [1909] 2 K. B. 820 ; 78 L. J. K. B. 958 ; 101 L. T. 368 ; 25 T. L. R. 762 ; 53 Sol. J. 714 ; *sub nom.* Hillyer *v.* London Corporation, 73 J. P. 501 [C. A.] 55
Hinton *v.* Heather (1845), 15 L. J. Ex. 39 ; 14 M. & W. 131 ... 136
Hirst *v.* West Riding Union Banking Co., [1901] 2 K. B. 560 ; 70 L. J. K. B. 828 ; 85 L. T. 3 ; 49 W. R. 715 ; 17 T. L. R. 629 [C. A.] 160
Hoare & Co. *v.* McAlpine, [1923] 1 Ch. 167 ; [1922] W. N. 329 ; 92 L. J. Ch. 81 ; 67 Sol. J. 146 ; 39 T. L. R. 97 ; 128 L. T. 526 ... ... 190, 232
Hodges *v.* Webb, [1920] 2 Ch. 70 ; 89 L. J. Ch. 273 ; 123 L. T. 80 ; 36 T. L. R. 311 ... ... 11, 150

PAGE

Hodgson *v.* Sidney (1866), L. R. 1 Ex. 313; 35 L. J. Ex. 182; 14 L. T. 624; 14 W. R. 923; 4 H. & C. 492; 12 Jur. (N.S.) 694 69

Hodson *v.* Pare, [1899] 1 Q. B. 455; 68 L. J. Q. B. 309; 80 L. T. 13; 47 W. R. 241 [C. A.] 122

Hogg *v.* Ward (1858), 27 L. J. Ex. 443; 6 W. R. 595; 3 H. & N. 417; 4 Jur. (N.S.) 885 267

Holden *v.* Thompson, [1907] 2 K. B. 489; 78 L. J. K. B. 889; 97 L. T. 138; 23 T. L. R. 529 140

Hole *v.* Barlow (1858), 4 C. B. (N.S.) 334; 27 L. J. C. P. 207; 6 W. R. 619; 4 Jur. (N.S.) 1019... 235

—— *v.* Sittingbourne and Sheerness Rail. Co. (1861), 6 H. & N. 488; 30 L. J. Ex. 81; 3 L. T. 750; 9 W. R. 274 ... ...62, 65

Holleran *v.* Bagnell (1879), 4 L. R. Ir. 740 70

Holliday *v.* National Telephone Co., [1899] 2 Q. B. 392; 68 L. J. Q. B. 1016; 81 L. T. 252; 47 W. R. 658; 15 T. L. R. 483 [C. A.] 63, 64, 65, 66

Hollins *v.* Fowler (1875), L. R. 7 H. L. 757; 44 L. J. Q. B. 169; 33 L. T. 73 ... ... 7, 285, 286

Holmes *v.* Mather (1875), L. R. 10 Ex. 261; 44 L. J. Ex. 176; 33 L. T. 361; 23 W. R. 364 ... ... 9, 258

Holt *v.* Scholefield (1796), 6 T. R. 691; 3 R. R. 318 109

Hope *v.* Evered (1886), 17 Q. B. D. 338; 55 L. J. M. C. 146; 55 L. T. 320; 34 W. R. 742; 16 Cox C. C. 112 ... 133

—— *v.* Osborne, [1913] 2 Ch. 349; 77 J. P. 317; 82 L. J. Ch. 457; 109 L. T. 41; 29 T. L. R. 606; 57 Sol. J. 702; 11 L. G. R. 825 223

Horsfall *v.* Thomas (1862), 1 H. & C. 90; 31 L. J. Ex. 322; 6 L. T. 462; 8 Jur. (N.S.) 721; 10 W. R. 650 ... ... 157, 159

Horwood *v.* Smith (1788), 2 T. R. 750; 2 Leach C. C. 586 n.; 1 R. R. 613 287

Houghton *v.* Pilkington, [1912] 3 K. B. 308; 82 L. J. K. B. 75; 107 L. T. 235; 28 T. L. R. 492; 56 Sol. J. 633 55

Houlden *v.* Smith (1850), 14 Q. B. 841; 19 L. J. Q. B. 170; 14 Jur. 598 ... ...17, 19

Hounsell *v.* Smyth (1860), 7 C. B. (N.S.) 731; 29 L. J. C. P. 203; 1 L. T. 440; 8 W. R. 277; 6 Jur. (N.S.) 897 221

Howe *v.* Oliver (1908), 24 T. L. R. 781; 52 Sol. J. 684 46

Howley Park Coal and Cannel Co. *v.* London and North Western Rail. Co., [1913] A. C. 11; 82 L. J. Ch. 76; 107 L. T. 625; 29 T. L. R. 35; 57 Sol. J. 42; 50 Sc. L. R. 638 ... 242, 244

Hudson *v.* Roberts (1851), 6 Ex. 697; 20 L. J. Ex. 299 ... 195, 197

Huffer *v.* Allen (1866), L. R. 2 Ex. 15; 36 L. J. Ex. 17; 15 L. T. 225; 15 W. R. 281; 4 H. & C. 634; 12 Jur. (N.S.) 930 ... 138

Huggett *v.* Miers, [1908] 2 K. B. 278; 77 L. J. K. B. 710; 99 L. T. 326; 24 T. L. R. 582; 52 Sol. J. 481 [C. A.] 169, 226

Hughes *v.* Percival (1883), 8 App. Cas. 443; 47 J. P. 772; 52 L. J. Q. B. 719; 49 L. T. 189; 31 W. R. 725 ... ...63, 66

Hulton *v.* Hulton, [1917] 1 K. B. 813; 86 L. J. K. B. 633; 116 L. T. 551; 33 T. L. R. 197; 61 Sol. J. 268 [C. A.] 41

Hulton (E.) & Co. *v.* Jones, [1910] A. C. 20; 79 L. J. K. B. 198; 101 L. T. 831; 26 T. L. R. 128; 54 Sol. J. 116; 47 Sc. L. R. 591 ... ... 9, 103, 112, 113

Hume *v.* Oldacre (1816), 1 Stark. 351; 18 R. R. 779 46

Humphries *v.* Brogden (1850), 12 Q. B. 739; 20 L. J. Q. B. 10; 15 Jur. 124 243

PAGE

Hunt *v.* Great Northern Rail. Co., [1891] 2 Q. B. 189 ; 55 J. P. 648 ; 60 L. J. Q. B. 498 [C. A.] 126
—— *v.* Star Newspaper Co., Limited, [1908] 2 K. B. 309 ; 77 L. J. K. B. 732 ; 98 L. T. 629 ; 24 T. L. R. 452 ; 52 Sol. J. 376 [C. A.] 119
Hurlstone *v.* London Electric Rail. Co. (1914), 30 T. L. R. 398 [C. A.] 62
Hurst *v.* Picture Theatres, Limited, [1915] 1 K. B. 1 ; 83 L. J. K. B. 1837 ; 111 L. T. 972 ; 30 T. L. R. 642 ; 58 Sol. J. 739 [C. A.] 261
Hutchinson *v.* York, Newcastle, and Berwick Rail. Co. (1850), 19 L. J. Ex. 296 ; 5 Ex. 343 ; 6 Rail. Cas. 580 205
Huth *v.* Huth, [1915] 3 K. B. 32 ; 84 L. J. K. B. 1307 ; 113 L. T. 145 ; 31 T. L. R. 350 [C. A.] 113

I.

Ilott *v.* Wilkes (1820), 3 B. & A. 304 ; 22 R. R. 400 23
Imperial Gas Light and Coke Co. (Directors) *v.* Broadbent (1859), 29 L. J. Ch. 377 ; 7 H. L. Cas. 600 ; 5 Jur. (N.S.) 1319 ... 86
Inchbald *v.* Robinson, Inchbald *v.* Barrington (1869), L. R. 4 Ch. 388 ; 20 L. T. 259 ; 17 W. R. 459 231
Indermaur *v.* Dames (1866), L. R. 1 C. P. 274 ; affirmed (1867), L. R. 2 C. P. 311 ; 36 L. J. C. P. 181 ; 16 L. T. 293 ; 15 W. R. 434 ... ... 9, 168, 170, 171
Invincible, The (1814), 2 Gall. 29 39
Irwin *v.* Brandwood (1864), 33 L. J. Ex. 257 ; 9 L. T. 772 ; 12 W R. 438 ; 2 H. & C. 960 ; 10 Jur. (N.S.) 370 ... 110
—— *v.* Grey (1862), 3 F. & F. 365 ... ... 20, 27
—— *v.* Waterloo Taxi Cab Co., Limited, [1912] 3 K. B. 588 ; 81 L. J. K. B. 967 ; 107 L. T. 288 ; 28 T. L. R. 567 ; 56 Sol. J. 720 [C. A.] 55
Ismay, Imrie & Co. *v.* Williamson, [1908] A. C. 437 ; 77 L. J. P. C. 107 ; 99 L. T. 595 ; 24 T. L. R. 881 ; 52 Sol. J. 713 214
Ivay *v.* Hedges (1882), 9 Q. B. D. 80 169

J.

Jackson *v.* Smithson (1846), 15 M. & W. 563 195
—— *v.* Watson & Sons, [1909] 2 K. B. 193 ; 78 L. J. K. B. 587 ; 100 L. T. 799 ; 25 T. L. R. 454 ; 53 Sol. J. 447 [C. A.] ...71, 76
Jacobs *v.* Seward (1872), L. R. 5 H. L. 464 ; 41 L. J. C. P. 221 ; 27 L. T. 185 ... ... 276, 294
Jamal *v.* Moolla Dawood, Sons & Co., [1916] 1 A. C. 175 ; 85 L. J. P. C. 29 ; 114 L. T. 1 ; 32 T. L. R. 79 ; 60 Sol. J. 139... 78
Janvier *v.* Sweeney, [1919] 2 K. B. 316 ; 88 L. J. K. B. 1231 ; 121 L. T. 179 ; 35 T. L. R. 360 ; 63 Sol. J. 430 [C. A.] ... 79
Jasperson *v.* Dominion Tobacco Co., [1923] A. C. 709 ; 92 L. J. P. C. 190 ; 129 L. T. 771 ... ... 149, 150
Jefferson *v.* Derbyshire Farmers Limited, [1921] 2 K. B. 281 ; 124 L. T. 775 ; 90 L. J. K. B. 1361 54
Jenkins *v.* Great Western Rail. Co., [1912] 1 K. B. 525 ; 81 L. J. K. B. 378 ; 105 L. T. 882 [C. A.] 170
—— *v.* Jackson (1888), 40 Ch. D. 71 ; 58 L. J. Ch. 124 ; 60 L. T. 105 ; 37 W. R. 253 231
Jennings *v.* Rundall (1799), 8 T. R. 335 ; 4 R. R. 680 44

PAGE
Jenoure *v.* Delmege, [1891] A. C. 73 ; 55 J. P. 500 ; 60 L. J. P. C. 11 ; 63 L. T. 814 ; 39 W. R. 388 123
Jewson *v.* Gatti (1886), 2 T. L. R. 441 [C. A.] 182
Job *v.* Potton (1875), L. R. 20 Eq. 84 ; 44 L. J. Ch. 262 ; 32 L. T. 110 276
Job Edwards Limited *v.* Birmingham Canal Navigations, [1924] 1 K. B. 341 [C. A.]; 93 L. J. K. B. 261 ; 130 L. T. 522 ; 68 Sol. J. 501 ; 40 T. L. R. 88 ... ... 199, 225, 236, 239
John Bright & Bros., Limited *v.* John Bright (Outfitters) Limited [C. A.] 67 Sol. J. 112 155
Johnson *v.* Emerson (1871), L. R. 6 Ex. 329 ; 40 L. J. Ex. 201 ; 25 L. T. 337 ... ... 131, 132, 137
——— *v.* Lindsay & Co., [1891] A. C. 371 ; 55 J. P. 644 ; 61 L. J. Q. B. 90 ; 65 L. T. 97 ; 40 W. R. 405 207
——— *v.* Marshall, Sons & Co., Limited, [1906] A. C. 409 ; 75 L. J. K. B. 868 ; 94 L. T. 828 ; 22 T. L. R. 565 [C. A.] 215
——— *v.* Pie (1665), 1 Keb. 905, 913 44
Johnston *v.* Great Western Rail. Co., [1904] 2 K. B. 250 ; 73 L. J. K. B. 568 ; 91 L. T. 157 ; 50 W. R. 612 ; 20 T. L. R. 455 [C. A.] 75, 76, 80
Johnstone *v.* Pedlar, [1921] 2 A. C. 262 ; [1921] W. N. 229 ; 37 T. L. R. 870 ; 65 Sol. J. 679 ; 90 L. J. P. C. 181 ; 125 L. T. 809 16
Jones *v.* Boyce (1816), 1 Stark. 493 ; 18 R. R. 812 186
——— *v.* Chapman (1849), 2 Ex. 803, 821 274
——— *v.* Festiniog Rail. Co. (1868), L. R. 3 Q. B. 733 ; 9 B. & S. 835 ; 37 L. J. Q. B. 214 ; 18 L. T. 902 ; 17 W. R. 28 : 23, 200
——— *v.* Gooday (1841), 10 L. J. Ex. 275 ; 8 M. & W. 146 ; 1 D. (N.S.) 50 ; 58 R. R. 649 77
——— *v.* Herne (1759), 2 Wils. 87 109
——— *v.* Jones, [1916] 2 A. C. 481 ; 85 L. J. K. B. 1519 ; 115 L. T. 432 ; 32 T. L. R. 705 ; 61 Sol. J. 8 102
——— *v.* Lee (1912), 76 J. P. 137 ; 106 L. T. 123 ; 28 T. L. R. 92 ; 56 Sol. J. 125 198
——— *v.* Liverpool Corporation (1885), 14 Q. B. D. 890 ; 49 J. P. 311 ; 54 L. J. Q. B. 345 ; 33 W. R. 551 54
——— *v.* Scullard, [1898] 2 Q. B. 565 ; 67 L. J. Q. B. 895 ; 79 L. T. 386 56
——— *v.* Williams (1843), 11 M. & W. 176 ; 12 L. J. Ex. 249 ; 63 R. R. 564 240
Jordeson *v.* Sutton, Southcoates and Drypool Gas Co., [1899] 2 Ch. 217 ; 63 J. P. 692 ; 68 L. J. Ch. 457 ; 80 L. T. 815 [C. A.] 243, 244
Joynt *v.* Cycle Trade Publishing Co., [1904] 2 K. B. 292 ; 73 L. J. K. B. 752 ; 91 L. T. 155 [C. A.] 119
Judge *v.* Cox (1816), 1 Stark. 285 197

K.

Kansas Pacific Rail. Co. *v.* Mihlman (1876), 17 Kansas Reports 224 : 96
Karavias *v.* Callinicos, [1917] W. N. 323 ; 144 L. T. J. 25 [C. A.] : 38, 75
Kearney *v.* L. B. & S. C. Rail. (1871), L. R. 6 Q. B. 759 ; 40 L. J. Q. B. 285 ; 24 L. T. 913 ; 20 W. R. 24 ... ... 183, 184
Keates *v.* Cadogan (Earl) (1851), 10 C. B. 591 ; 20 L. J. C. P. 76 ; 15 Jur. 428 226
Keck *v.* Faber (1916), 60 Sol. J. 253 78

PAGE

Keen *v.* Henry, [1894] 1 Q. B. 292 ; 58 J. P. 262 ; 63 L. J. Q. B. 211 ; 69 L. T. 671 ; 42 W. R. 214 ; 9 R. 102 56
Keighley, Maxsted & Co. *v.* Durant, [1901] A. C. 240 ; 70 L. J. K. B. 662 ; 84 L. T. 777 53
Kelly *v.* Metropolitan Rail Co., [1895] 1 Q. B. 944 ; 59 J. P. 437 ; 64 L. J. Q. B. 568 ; 72 L. T. 551 ; 43 W. R. 497 ; 14 R. 417 [C. A.] 33, 34, 166
Kendillon *v.* Maltby (1842), Car. & M. 402 ; 2 M. & Rob. 438 ... 115
Kensit *v.* Great Eastern Rail. Co. (1884), 27 Ch. D. 122 ; 54 L. J. Ch. 19 ; 51 L. T. 862 ; 32 W. R. 885 [C. A.] 251
Keyse *v.* Powell (1853), 2 El. & Bl. 132 ; 22 L. J. Q. B. 305 ; 17 Jur. 1052 275
Kidgill *v.* Moor (1850), 9 C. B. 364 ; 19 L. J. C. P. 177 ; 1 L. M. & P. 131 ... ... 239, 253
Kimber *v.* Gas Light and Coke Co., [1918] 1 K. B. 439 ; 82 J. P. 125 ; 87 L. J. K. B. 651 ; 118 L. T. 562 ; 34 T. L. R. 260 ; 62 Sol. J. 329 ; 16 L. G. R. 280 [C. A.] ... 168
——— *v.* Press Association, [1893] 1 Q. B. 65 ; 57 J. P. 247 ; 62 L. J. Q. B. 152 ; 67 L. T. 515 ; 41 W. R. 17 ; 4 R. 95 [C. A.] 123, 127
Kine *v.* Jolly, [1905] 1 Ch. 480 ; 74 L. J. Ch. 174 ; 53 W. R. 462 [C. A.] 249
King *v.* London Improved Cab Co. (1889), 23 Q. B. D. 281 ; 53 J. P. 788 ; 58 L. J. Q. B. 456 ; 61 L. T. 34 ; 37 W. R. 737 [C. A.] 56
—— *v.* Rose (1673), 1 Freem. 347 288
Kirk *v.* Gregory (1876), 1 Ex. D. 55 ; 45 L. J. Ex. 186 ; 34 L. T. 488 ; 24 W. R. 614 ... ... 285, 289
—— *v.* Todd (1882), 21 Ch. D. 484 ; 52 L. J. Ch. 224 ; 47 L. T. 676 ; 31 W. R. 69 [C. A.] 67
Koursk, The, [1924] P. 140 [C. A.] ; [1924] W. N. 79 ; 40 T. L. R. 399 ; 68 Sol. J. 842 ; 93 L. J. P. 72 ; 131 L. T. 700 46

L.

Lafond *v.* Ruddock (1853), 13 C. B. 813 ; 22 L. J. C. P. 217 ; 1 W. R. 371 ; 1 C. L. R. 339 ; 17 Jur. 624 96
Lambert *v.* Lowestoft Corporation, [1901] 1 K. B. 590 ; 65 J. P. 326 ; 70 L. J. K. B. 333 ; 84 L. T. 237 ; 49 W. R. 316 ; 17 T. L. R. 273 30
Lamine *v.* Dorrell (1705), 2 Ld. Raym. 1216 293
Lancashire and Yorkshire Rail. Co., London and North Western Rail. Co., and Graeser, Limited *v.* MacNicoll (1918), 88 L. J. K. B. 601 ; 118 L. T. 596 ; 34 T. L. R. 280 ; 62 Sol. J. 365 ... 286
Lancashire Waggon Co. *v.* Fitzhugh (1861), 30 L. J. Ex. 231 ; 3 L. T. 703 ; 6 H. & N. 502 ... ... 286, 289
Lane *v.* Capsey, [1891] 3 Ch. 411 ; 61 L. J. Ch. 55 ; 65 L. T. 375 ; 40 W. R. 87 240
—— *v.* Cox, [1897] 1 Q. B. 415 ; 66 L. J. Q. B. 193 ; 76 L. T. 135 ; 45 W. R. 261 [C. A.] 168, 226
Langridge *v.* Levy (1837), 6 L. J. Ex. 137 ; 2 M. & W. 519 ; 46 R. R. 689 ... ... 158, 159
Larkin *v.* Long, [1915] A. C. 814 ; 84 L. J. P. C. 201 ; 113 L. T. 337 ; 31 T. L. R. 405 ; 59 Sol. J. 455 ; 49 I. L. T. 121 11, 150

PAGE

Latham *v.* Johnson (R.) and Nephew, Limited, [1913] 1 K. B. 398 ; 77 J. P. 137 ; 82 L. J. K. B. 258 ; 108 L. T. 4 ; 29 T. L. R. 124 ; 57 Sol. J. 127 [C. A.] 172, 177
Latter *v.* Braddell and Sutcliffe (1881), 22 W. R. 239 ... 23, 257
Law *v.* Llewellyn, [1906] 1 K. B. 487 ; 70 J. P. 220 ; 75 L. J. K. B. 320 ; 94 L. T. 359 ; 54 W. R. 368 ... ... 17, 121
Lawrence *v.* Obee (1815), 1 Stark. 22 271
Lay *v.* Midland Rail. Co. (1875), 34 L. T. 30 182
Lee *v.* Riley (1865), 18 C. B. (N.S.) 722 ; 34 L. J. C. P. 212 ; 12 L. T. 388 ; 13 W. R. 751 ; 11 Jur. (N.S.) 527 198
Leeds Industrial Co-operative Society *v.* Slack, [1924] A. C. 851 ; [1924] W. N. 203 ; 93 L. J. Ch. 436 ; 68 Sol. J. 715 ; 40 T. L. R. 745 ; 131 L. T. 710 87
Leith *v.* Pope (1799), 2 W. Bla. 1327... 136
Le Lievre *v.* Gould, [1893] 1 Q. B. 491 ; 57 J. P. 484 ; 62 L. J. Q. B. 353 ; 68 L. T. 626 ; 41 W. R. 468 ; 4 R. 274 [C. A.] : 36, 158, 163, 164
Lemaitre *v.* Davis (1881), 19 Ch. D. 281 ; 46 J. P. 324 ; 51 L. J. Ch. 173 ; 46 L. T. 407 ; 30 W. R. 360 246
Lemmon *v.* Webb, [1895] A. C. 1 ; 59 J. P. 564 ; 64 L. J. Ch. 205 ; 71 L. T. 647 ; 11 R. 116 ... ... 231, 240
Leslie (R.) Limited *v.* Sheill, [1914] 3 K. B. 607 ; 83 L. J. K. B. 1145 ; 111 L. T. 106 ; 30 T. L. R. 460 ; 58 Sol. J. 453 ... 44
Lethbridge *v.* Kirkman (1855), 25 L. J. Q. B. 89 ; 4 W. R. 90 ; 2 Jur. (N.S.) 378 95
Levet *v.* Gas Light and Coke Co., [1919] 1 Ch. 24 ; 88 L. J. Ch. 12 ; 119 L. T. 761 ; 35 T. L. R. 47 ; 63 Sol. J. 69 248
Ley *v.* Peter (1858), 27 L. J. Ex. 239 ; 6 W. R. 437 ; 3 H. & N. 101 280
Lister *v.* Perryman (1870), L. R. 4 H. L. 521 ; 39 L. J. Ex. 177 ; 23 L. T. 269 ; 19 W. R. 9 ... ... 133, 134, 135
Lloyd *v.* Grace Smith & Co., [1912] A. C. 716 ; 81 L. J. K. B. 1140 ; 107 L. T. 531 ; 28 T. L. R. 547 ; 56 Sol. J. 723 54, 55, 58
Lodge Holes Colliery Co., Limited *v.* Wednesbury Corporation, [1908] A. C. 323 ; 72 J. P. 417 ; 77 L. J. K. B. 847 ; 99 L. T. 210 ; 24 T. L. R. 771 ; 52 Sol. J. 620 ; 6 L. G. R. 924 ... 77
London, H.M.S., [1914] P. 72 ; 83 L. J. P. 74 ; 12 Asp. Mar. Law Cas. 405 ; 109 L. T. 960 ; 30 T. L. R. 196 14
London, Brighton & South Coast Ry. Co. *v.* Truman (1885), 11 App. Cas. 45 ; 50 J. P. 388 ; 55 L. J. Ch. 354 ; 54 L. T. 250 ; 34 W. R. 657 22
London Association for Protection of Trade *v.* Greenlands, Limited, [1916] 2 A. C. 15 ; 85 L. J. K. B. 698 ; 114 L. T. 434 ; 32 T. L. R. 281 ; 60 Sol. J. 272 125
Long *v.* Smithson (1918), 118 L. T. 678 ; 62 Sol. J. 472 ; 53 L. Jo. 30 : 11
Longmeid *v.* Holliday (1851), 20 L. J. Ex. 430 ; 6 Ex. 761 ... 177
Lotan *v.* Cross (1810), 2 Camp. 464 ... ... 284, 289
Low (*or* Jackson) *v.* General Steam Fishing Co., Limited, [1909] A. C. 523 ; 78 L. J. P. C. 148 ; 101 L. T. 401 ; 25 T. L. R. 787 ; 53 Sol. J. 763 215
Low Moor Co. *v.* Stanley Coal Co. (1876), 34 L. T. 186 [C. A.]... 281
Lowery *v.* Walker, [1910] 1 K. B. 173 [C. A.] ; reversed, [1911] A. C. 10 ; 80 L. J. K. B. 138 ; 103 L. T. 674 ; 27 T. L. R. 83 ; 55 Sol. J. 62 ; 48 Sc. L. R. 726 ... ... 172, 199
Lucy *v.* Bawden, [1914] 2 K. B. 318 ; 38 L. J. K. B. 523 ; 110 L. T. 580 ; 30 T. L. R. 321 ... ... 169, 226
Ludgater *v.* Love (1881), 45 J. P. 600 ; 44 L. T. 694 [C. A.] ... 106

PAGE
Lumley *v.* Gye (1853), 2 E. & B. 216 ; 22 L. J. Q. B. 463 ; 1 W. R. 432 ; 17 Jur. 827 ... ... 149, 150
Lygo *v.* Newbold (1854), 9 Ex. 302 ; 23 L. J. Ex. 108 ; 2 W. R. 158 ; 2 C. L. R. 449 ... ... 23, 166
Lyles *v.* Southend-on-Sea Corporation, [1905] 2 K. B. 1 ; 69 J. P. 193 ; 74 L. J. K. B. 484 ; 92 L. T. 586 ; 21 T. L. R. 389 ; 3 L. G. R. 691 [C. A.] 98
Lynch *v.* Nurdin (1841), 1 Q. B. 29 ; 10 L. J. Q. B. 73 ; 4 P. & D. 672 ; 5 Jur. 797 ; 55 R. R. 191 ... ... 15, 177, 181
Lyne *v.* Nicholls (1906), 23 T. L. R. 86 130
Lyon *v.* Fishmongers' Co. (1876), 1 App. Cas. 662 ; 46 L. J. Ch. 68 ; 35 L. T. 569 ; 25 W. R. 165 ... ... 6, 223
Lyons, Sons, & Co. *v.* Gulliver, [1914] 1 Ch. 631 ; 78 J. P. 98 ; 83 L. J. Ch. 281 ; 110 L. T. 284 ; 30 T. L. R. 75 ; 58 Sol. J. 97 ; 12 L. G. R. 194 [C. A.] 223, 231

M.

Machado *v.* Fontes, [1897] 2 Q. B. 231 ; 66 L. J. Q. B. 542 ; 76 L. T. 588 ; 45 W. R. 565 [C. A.] 39, 40
Macintosh *v.* Dun, [1908] A. C. 390 ; 77 L. J. P. C. 113 ; 99 L. T. 64 ; 24 T. L. R. 705 ; 52 Sol. J. 580 ... ... 122, 125
Mackay *v.* Ford (1860), 29 L. J. Ex. 404 ; 2 L. T. 514 ; 8 W. R. 506 ; 5 H. & N. 792 ; 6 Jur. (N.S.) 587 121
Macleay *v.* Tait, [1906] A. C. 24 159
McCartney *v.* Londonderry and Lough Swilly Railway, [1904] A. C. 301 ; 73 L. J. P. C. 73 ; 91 L. T. 105 251
McDowall *v.* Great Western Railway, [1903] 2 K. B. 331 ; 72 L. J. K. B. 752 ; 88 L. T. 825 [C. A.] 183
M'Gregor *v.* Thwaites (1824), 2 L. J. K. B. 217 ; 3 B. & C. 24 ; 4 Dow. & Ry. 695 ; 27 R. R. 274 115
Macgregor *v.* Lord Advocate, [1921] S. C. 847 43
McKenzie *v.* Hardinge (1906), 23 T. L. R. 15 143
M'Kinnon *v.* Penson, 8 Ex. 319 30
M'Pherson *v.* Daniels (1829), 8 L. J. (O.S.) K. B. 14 ; 10 B. & C. 263 ; 5 M. & Ry. 251 ; 34 R. R. 397 ... ... 102, 117
McQuire *v.* Western Morning News Co., [1903] 2 K. B. 100 ; 72 L. J. K. B. 612 ; 88 L. T. 757 ; 51 W. R. 689 [C. A.] ... 118, 122
Magdalena Steam Navigation Co. *v.* Martin (1859), 2 El. & El. 94 ; 28 L. J. Q. B. 310 ; 7 W. R. 598 ; 5 Jur. (N.S.) 1260 ... 43
Maisel *v.* Financial Times, Limited, [1915] 3 K. B. 336 ; 84 L. J. K. B. 2148 ; 113 L. T. 772 ; 31 T. L. R. 510 ; 59 Sol. J. 596 [C. A.] 116
Mallam *v.* Rose, [1915] 2 Ch. 222 ; 84 L. J. Ch. 934 ; 113 L. T. 1106 247
Manby *v.* Scott (1663), 1 Sid. 109 44
Manchester Corporation *v.* Williams, [1891] 1 Q. B. 94 ; 54 J. P. 712 ; 60 L. J. Q. B. 23 ; 63 L. T. 805 ; 39 W. R. 302 : 41, 103, 106
Mangena *v.* Wright, [1909] 2 K. B. 958 ; 78 L. J. K. B. 879 ; 100 L. T. 960 ; 25 T. L. R. 534 ; 53 Sol. J. 485 127
Manley *v.* Field (1859), 7 C. B. (N.S.) 96 ; 29 L. J. C. P. 79 ; 6 Jur. (N.S.) 300 146
Mansel *v.* Webb (1918), 88 L. J. K. B. 323 ; 120 L. T. 360 [C. A.] 200
Manton *v.* Brocklebank, [1923] 2 K. B. 212 [C. A.] ; [1923] W. N. 107 ; 67 Sol. J. 455 ; 39 T. L. R. 344 ; 92 L. J. K. B. 624 ; 129 L. T. 135 ... ... 34, 198, 199

PAGE

Manzoni *v.* Douglas (1880), 6 Q. B. D. 145 ; 45 J. P. 291 ; 50 L. J. Q. B. 289 ; 29 W. R. 425 ... ... 9, 165, 183

Markey *v.* Tolworth Joint Isolation Hospital District Board, [1900] 2 Q. B. 454 ; 64 J. P. 648 ; 69 L. J. Q. B. 738 ; 83 L. T. 28 ; 16 T. L. R. 411 98

Marks *v.* Frogley, [1898] 1 Q. B. 888 ; 67 L. J. Q. B. 605 ; 78 L. T. 607 ; 46 W. R. 548 [C. A.] 262

——— *v.* Samuel, [1904] 2 K. B. 287 ; 73 L. J. K. B. 587 ; 90 L. T. 590 ; 53 W. R. 88 ; 20 T. L. R. 430 [C. A.] 110

Marsh *v.* Joseph, [1897] 1 Ch. 213 ; 66 L. J. Ch. 128 ; 75 L. T. 558 ; 45 W. R. 209 [C. A.] 53

——— *v.* Loader (1863), 14 C. B. (N.S.) 535 ; 11 W. R. 784 ... 266

Marshall *v.* York, Newcastle and Berwick Rail. Co. (1851), 11 C. B. 655 ; 21 L. J. C. P. 34 ; 16 Jur. 124 [C. A.] 36

Martin, *Ex parte* (1879), 4 Q. B. D. 212 ; affirmed *sub nom.* Martin *v.* Bannister (1879), 4 Q. B. D. 491 ; 48 L. J. Q. B. 677 ; 28 W. R. 143 [C. A.] 85

——— *v.* Stanborough (1924), [C. A.] 69 Sol. J. 104 ; 41 T. L. R. 1 15

——— *d.* Tregonwell *v.* Strachan (1743), 5 T. R. 107 n. ; 6 Bro. P. C. 319 ; 1 Wils. 266 ; 2 Stra. 1179 ; 2 R. R. 552 n. ... 278

Martindale *v.* Smith (1841), 1 Q. B. 389 ; 10 L. J. Q. B. 155 ; 1 G. & D. 1 ; 5 Jur. 932 ; 55 R. R. 285 292

Mason *v.* Cæsar (1676), 2 Mod. 66 240

——— *v.* Hill (1832), 1 L. J. K. B. 107 ; 3 B. & Ad. 304 ; 39 R. R. 354 252

Maxey Drainage Board *v.* Great Northern Rail. Co. (1912), 76 J. P. 236 ; 106 L. T. 429 ; 56 Sol. J. 275 ; 10 L. G. R. 248 ... 10

May *v.* Burdett (1846), 9 Q. B. 101 ; 16 L. J. Q. B. 64 ; 10 Jur. 692 ; 72 R. R. 189 195

Mayhew *v.* Herrick (1849), 7 C. B. 229 ; 18 L. J. C. P. 179 ; 13 Jur. 1078 294

Mayo *v.* Stazicker, [1921] 2 K. B. 196 ; 85 J. P. 141 ; 37 T. L. R. 383 ; 65 Sol. J. 380 ; 19 L. G. R. 240 235

Mears *v.* London and South Western Rail. Co. (1862), 11 C. B. (N.S.) 854 ; 31 L. J. C. P. 220 ; 6 L. T. 190 289

Mee *v.* Cruikshank (1902), 66 J. P. 89 ; 86 L. T. 708 259

Mercer *v.* South Eastern and Chatham Rail., [1922] 2 K. B. 549 ; 38 T. L. R. 431 ; 127 L. T. 723 ... ... 9, 168

Merest *v.* Harvey (1814), 5 Taunt. 442 ; 1 Marsh, 139 ; 15 R. R. 548 83, 270

Merivale *v.* Carson (1887), 20 Q. B. D. 275 ; 52 J. P. 261 ; 58 L. T. 331 ; 36 W. R. 231 [C. A.] 119, 120

Merryweather *v.* Nixan, 8 T. R. 186 ; 16 R. R. 810 46

Mersey Docks and Harbour Board *v.* Procter, [1923] A. C. 345, 490 ; [1923] W. N. 86 ; 67 Sol. J. 481 ; 39 T. L. R. 302 ; 92 L. J. P. 65 ; 129 L. T. 325 69

Metropolitan Association, etc. *v.* Petch (1858), 5 C. B. (N.S.) 504 ; 27 L. J. C. P. 330 ; 4 Jur. (N.S.) 1000 239

Metropolitan Asylum District *v.* Hill (1881), 6 App. Cas. 193 ; 45 J. P. 664 ; 50 L. J. Q. B. 353 ; 44 L. T. 653 ; 29 W. R. 617 ... ... 21, 22, 231

Metropolitan Bank *v.* Pooley (1885), 10 App. Cas. 210 ; 49 J. P. 756 ; 54 L. J. Q. B. 449 ; 53 L. T. 163 ; 33 W. R. 709 ... 138

Metropolitan Rail. Co. *v.* Jackson (1877), 3 App. Cas. 193 ; 47 L. J. C. P. 303 ; 37 L. T. 679 ; 26 W. R. 175 185

Metropolitan Saloon Omnibus Co. *v.* Hawkins (1859), 28 L. J. Ex. 201 ; 4 H. & N. 87 ; 7 W. R. 265 ; 5 Jur. (N.S.) 226 ... 105

PAGE

Meux *v.* Great Eastern Rail. Co., [1895] 2 Q. B. 387 ; 59 J. P. 662 ; 64 L. J. Q. B. 657 ; 73 L. T. 247 ; 43 W. R. 680 ; 14 R. 620 [C. A.] 36, 164, 173

Middleton *v.* Hall (1913), 77 J. P. 172 ; 108 L. T. 804 ... 169, 227

Mighell *v.* Sultan of Johore, [1894] 1 Q. B. 149 [C. A.] ; 63 L. J. Q. B. 593 ; 9 R. 447 ; 70 L. T. 64 ; 58 J. P. 244 43

Miller *v.* David (1874), L. R. 9 C. P. 118 ; 43 L. J. C. P. 84 ; 30 L. T. 58 ; 22 W. R. 332 ... ... 103, 107

——— *v.* Dell, [1891] 1 Q. B. 468 ; 60 L. J. Q. B. 404 ; 63 L. T. 693 ; 39 W. R. 342 [C. A.] 94, 291

——— *v.* Hancock, [1893] 2 Q. B. 177 ; 57 J. P. 758 ; 69 L. T. 214 ; 41 W. R. 578 ; 4 R. 478 [C. A.] 169

Mills *v.* Brooker, [1919] 1 K. B. 555 ; 88 L. J. K. B. 950 ; 121 L. T. 254 ; 35 T. L. R. 261 ; 63 Sol. J. 431 ; 17 L. G. R. 238 ... 223

Miner *v.* Gilmour (1858), 12 Moo. P. C. C. 131 ; 7 W. R. 328 ... 250

Mintz *v.* Silverton (1920), 36 T. L. R. 399 55

Mitchell *v.* Crassweller (1853), 13 C. B. 237 ; 22 L. J. C. P. 100 ; 1 W. R. 153 ; 17 Jur. 716 57

Mogul Steamship Co. *v.* McGregor, Gow & Co. (1885), 15 Q. B. D. 476 ; 49 J. P. 646 ; 54 L. J. Q. B. 540 ; 53 L. T. 268 ; 15 Cox, C. C. 740 ; 5 Asp. M. L. C. 467 86

Mogul Steamship Co. *v.* McGregor, Gow & Co., [1892] A. C. 25 ; 56 J. P. 101 ; 61 L. J. Q. B. 295 ; 66 L. T. 1 ; 40 W. R. 337 ; 7 Asp. M. L. C. 120 152

Molière, The, [1925] P. 27 5

Monson *v.* Tussaud's, Limited, Monson *v.* Tussaud (Louis), [1894] 1 Q. B. 671 ; 58 J. P. 524 ; 63 L. J. Q. B. 454 ; 70 L. T. 335 ; 9 R. 177 [C. A.] 87, 102, 106

Montgomery *v.* Thompson, [1891] A. C. 217 ; 55 J. P. 756 ; 60 L. J. Ch. 757 ; 64 L. T. 748 ... ... 155, 156

Moore *v.* Meagher (1807), 1 Taunt. 39 ; 3 Smith, 135 ; 9 R. R. 702 108

——— *v.* Robinson (1831), 1 L. J. K. B. 4 ; 2 B. & Ad. 817 ... 289

Mordaunt *v.* Mordaunt (1870), L. R. 2 P. & D. 102... 44

Morgan *v.* Lingen (1863), 8 L. T. 800 105

——— *v.* London General Omnibus Co. (1884), 13 Q. B. D. 832 ; 48 J. P. 503 ; 53 L. J. Q. B. 352 ; 51 L. T. 213 ; 32 W. R. 759 [C. A.] 211

——— *v.* Vale of Neath Rail. Co. (1865), L. R. 1 Q. B. 149 ; 5 B. & S. 736 ; 35 L. J. Q. B. 23 ; 13 L. T. 564 ; 14 W. R. 144 ... 204, 206

Morrison *v.* Sheffield Corporation, [1917] 2 K. B. 866 ; 81 J. P. 277 ; 86 L. J. K. B. 1456 ; 117 L. T. 540 ; 33 T. L. R. 492 ; 61 Sol. J. 611 [C. A.] 21, 201

Mortimer *v.* Cradock (1843), 12 L. J. C. P. 166 ; 7 Jur. 45 ; 61 R. R. 784 79

Mostyn *v.* Fabrigas (1774), 1 Sm. L. C. 591 ; 1 Cowp. 161 40, 45

Moulton *v.* Edmonds (1859), 29 L. J. Ch. 181 ; 8 W. R. 153 ; 6 Jur. (N.S.) 305 ; 1 De G. F. & J. 246 95

Mullan *v.* Forrester, [1921] 2 I. R. 412 221

Mumford *v.* Oxford, Worcester and Wolverhampton Rail. Co. (1856), 25 L. J. Ex. 265 239

Munster *v.* Lamb (1883), 11 Q. B. D. 588 ; 47 J. P. 805 ; 52 L. J. Q. B. 726 ; 49 L. T. 252 ; 32 W. R. 248 [C. A.] 121

Murray *v.* Currie (1870), L. R. 6 C. P. 24 ; 40 L. J. C. P. 26 ; 23 L. T. 557 ; 19 W. R. 104 ... ... 54, 57

——— *v.* Fitzgerald, [1906] 2 I. R. 254 [C. A.] 145, 146

PAGE

Murray *v.* Hall (1849), 7 C. B. 441 ; 18 L. J. C. P. 161 ; 13 Jur. 262 276
Musgrave *v.* Pulido (1879), 5 App. Cas. 102 ; 49 L. J. P. C. 20 ; 41 L. T. 629 ; 28 W. R. 373 45
Musgrove *v.* Pandelis, [1919] 2 K. B. 43 ; 88 L. J. K. B. 915 ; 120 L. T. 601 ; 35 T. L. R. 299 ; 63 Sol. J. 353 [C. A.] 199, 200

N.

National Bank *v.* Graham (1879), 100 U. S. 699 43
National Phonograph Co., Limited *v.* Edison Bell Consolidated Phonograph Co., Limited, [1908] 1 Ch. 335 ; 77 L. J. Ch. 218 ; 98 L. T. 291 ; 24 T. L. R. 201 [C. A.] 151
National Telephone Co. *v.* Baker, [1893] 2 Ch. 185 ; 57 J. P. 373 ; 62 L. J. Ch. 699 ; 68 L. T. 283 ; 3 R. 318 190
Nelson *v.* Liverpool Brewery Co. (1877), 2 C. P. D. 311 ; 46 L. J. C. P. 675 ; 25 W. R. 877 ... ... 224, 226
Netherlands South African Rail. Co. *v.* Fisher (1901), 18 T. L. R. 116 41
Nevill *v.* Fine Arts and General Insurance Co., [1895] 2 Q. B. 156 ; 59 J. P. 371 ; 64 L. J. Q. B. 681 ; 72 L. T. 525 ; 14 R. 587 [C. A.] 123
Nevill *v.* Fine Arts and General Insurance Co., [1897] A. C. 68 ; 61 J. P. 500 ; 66 L. J. Q. B. 195 ; 75 L. T. 606 106
Neville *v.* London "Express" Newspaper, Limited, [1919] A. C. 368 ; 88 L. J. K. B. 282 ; 120 L. T. 299 ; 35 T. L. R. 167 ; 63 Sol. J. 213 ... ... 139, 141
Newberry *v.* Bristol Tramways and Carriage Co., Limited (1912), 107 L. T. 801 ; 29 T. L. R. 177 ; 57 Sol. J. 172 ; 11 L. G. R. 69 [C. A.] 167
Nichols *v.* Marsland (1876), L. R. 10 Ex. 255 ; on appeal, 2 Ex. D. 1 ; 46 L. J. Ex. 174 ; 35 L. T. 725 ; 25 W. R. 173 [C. A.] ... 191, 192, 196
Nicolls *v.* Bastard (1835), 5 L. J. Ex. 7 ; 2 C. M. & R. 659 ; 1 Tyr. & G. 156 ; 1 Gale, 295 293
Nisbet *v.* Rayne and Burn, [1910] 2 K. B. 689 ; 80 L. J. K. B. 84 ; 103 L. T. 178 ; 26 T. L. R. 632 ; 54 Sol. J. 719 ; 3 B. W. C. C. 507 [C. A.] 214
Nitro-glycerine Case (1872), 15 Wall. 524 ... ... 8, 10, 258
Nocton *v.* Ashburton (Lord), [1914] A. C. 932 ; 83 L. J. Ch. 784 ; 111 L. T. 641 ; [1914] W. N. 278 ; 30 T. L. R. 602 157
Norman *v.* Great Western Rail. Co., [1915] 1 K. B. 584 ; 84 L. J. K. B. 598 ; 112 L. T. 266 ; 31 T. L. R. 53 [C. A.] ... 9, 169
Norris *v.* Baker (1616), 1 Roll. Rep. 393, fol. 15 240
North *v.* Wood, [1914] 1 K. B. 629 ; 83 L. J. K. B. 587 ; 110 L. T. 703 ; 30 T. L. R. 258 195
Northampton Corporation *v.* Ward (1745), 1 Wils. 107 ; 2 Str. 1238 275
North-Eastern Rail. Co. *v.* Elliott (1860), 29 L. J. Ch. 808 ... 245
Notley *v.* Buck (1828), 6 L. J. (o.s). K. B. 271 ; 8 B. & C. 160 ; 2 M. & R. 68 293
Nunan *v.* Southern Rail. Co., [1924] 1 K. B. 223 [C. A.] ; [1923] W. N. 285 ; 93 L. J. K. B. 140 ; 130 L. T. 131 ; 68 Sol. J. 139 ; 40 T. L. R. 21 ... ... 70, 71

O.

PAGE
Oakey & Son *v.* Dalton (1887), 35 Ch. D. 700 ; 56 L. J. Ch. 823 ; 57 L. T. 18 ; 35 W. R. 709 68
Ocean Accident and Guarantee Corporation *v.* Ilford Gas Co., [1905] 2 K. B. 493 ; 74 L. J. K. B. 799 ; 93 L. T. 381 ; 21 T. L. R. 610 [C. A.] 275
Oelkers *v.* Ellis, [1914] 2 K. B. 139 ; 83 L. J. K. B. 658 ; 110 L. T. 332 ... ... 92, 280
Oldham *v.* Peake (1774), 2 W. Bl. 959 109
Olliet *v.* Bessey (1680), 2 T. Jo. 214 19
Onslow *v.* Horne (1771), 2 W. Bl. 750 ; 3 Wils. 177 107
Oram *v.* Hutt, [1914] 1 Ch. 98 ; 78 J. P. 51 ; 83 L. J. Ch. 161 ; 110 L. T. 187 ; 30 T. L. R. 55 ; 58 Sol. J. 80 [C. A.] ... 139
Ormiston *v.* Great Western Rail. Co., [1917] 1 K. B. 598 ; 86 L. J. K. B. 759 ; 116 L. T. 479 ; 33 T. L. R. 171 ... ... 43, 58, 59
Osborn *v.* Gillett (1873), L. R. 8 Ex. 88 ; 42 L. J. Ex. 53 ; 28 L. T. 197 ; 21 W. R. 409 25
sborne *v.* Chocqueel, [1896] 2 Q. B. 109 ; 65 L. J. Q. B. 534 ; 74 L. T. 786 ; 44 W. R. 575 ... ... 195, 197
Oughton *v.* Seppings (1830), 8 L. J. (o.s.) K. B. 394 ; 1 B. & Ad. 241 ; 35 R. R. 284 293
Oxley *v.* Watts (1785), 1 Term Rep. 12 ; 1 R. R. 133 290

P.

Padbury *v.* Holliday & Greenwood, Limited (1912), 28 T. L. R. 494 [C. A.] 62
Page *v.* Cowasjee Eduljee (1866), L. R. 1 P. C. 127 ; 14 L. T. 176 ; 12 Jur. (N.S.) 361 292
Paludina, The, [1925] P. 40 [C. A.] 13, 79
Pankhurst *v.* Hamilton (1887), 3 T. L. R. 500 117
Panton *v.* Williams (1841), 2 Q. B. 169 ; 10 L. J. Ex. 545 ; 1 G. & D. 504 ; 57 R. R. 631 134
Pappa *v.* Rose, (1872) L. R. 7 C. P. 525 18
Papworth *v.* Battersea Corporation, [1914] 2 K. B. 89 ; 78 J. P. 172 ; 83 L. J. K. B. 358 ; 110 L. T. 385 ; 30 T. L. R. 240 ; 12 L. G. R. 308 ; on appeal, 31 T. L. R. 52 ; 59 Sol. J. 74 [C. A.] 29
Paris *v.* Levy (1860), 9 C. B. (N.S.) 342 ; 30 L. J. C. P. 11 ; 3 L. T. 323 ; 9 W. R. 71 ; 7 Jur. (N.S.) 289 119
Parkins *v.* Scott (1862), 1 H. & C. 153 ; 31 L. J. Ex. 331 ; 6 L. T. 394 ; 10 W. R. 562 ; 8 Jur. (N.S.) 593 115
Parkinson *v.* Yorkshire (W. R.) C. C., (1922) 20 L. G. R. 308 ; 66 Sol. J. 488 31
Partridge *v.* Scott (1838), 7 L. J. Ex. 101 ; 3 M. & W. 220 ; 49 R. R. 578 245
Pasmore *v.* Oswaldtwistle Urban Council, [1898] A. C. 387 ; 62 J. P. 628 ; 67 L. J. Q. B. 635 ; 78 L. T. 659 28
Patrick *v.* Colerick (1838), 7 L. J. Ex. 135 ; 3 M. & W. 483 ; 49 R. R. 696 272
Paul *v.* Summerhayes (1879), 4 Q. B. D. 9 ; 48 L. J. M. C. 33 ; 39 L. T. 574 ; 27 W. R. 215 ; 14 Cox C. C. 202 271
Payne *v.* Rogers (1794), 2 H. Bl. 350 ; 3 R. R. 415 224
Pease *v.* Chaytor (1863), 3 B. & S. 620 ; 32 L. J. M. C. 121 ; 8 L. T. 613 ; 11 W. R. 563 ; 9 Jur. (N.S.) 664 19

PAGE

Peek *v.* Gurney (1873), L. R. 6 H. L. 377 ; 43 L. J. Ch. 19 ; 22 W. R. 29 ... ... 157, 158
Peer *v.* Humphrey (1835), 4 L. J. K. B. 100 ; 2 A. & E. 495 ; 4 N. & M. 430 ; 1 H. & W. 28 ; 41 R. R. 471 287
Penn *v.* Ward (1835), 2 C. M. & R. 338 262
Penny *v.* Wimbledon Urban Council, [1899] 2 Q. B. 72 ; 63 J. P. 406 ; 68 L. J. Q. B. 704 ; 80 L. T. 615 ; 47 W. R. 565 [C. A.] 66
Penrhyn *v.* Licensed Victuallers' Mirror (1890), 7 T. L. R. 1 ... 118
Penruddock's Case (1598), 5 Co. Rep. 100 b 236
Percy *v.* Glasgow Corporation, [1922] 2 A. C. 299 ; [1922] W. N. 181 ; 127 L. T. 501 ; 20 L. G. R. 605 ; 38 T. L. R. 722 ; 66 Sol. J. 555 ; 91 L. J. P. C. 187 ; 86 J. P. 201 58
Perry *v.* Clissold, [1907] A. C. 73 ; 76 L. J. P. C. 19 ; 95 L. T. 890 ; 23 T. L. R. 232 275
Peters *v.* Jones, [1914] 2 K. B. 781 ; 83 L. J. K. B. 1115 ; 110 L. T. 937 ; 30 T. L. R. 421 144
Petrel, The, [1893] P. 320 ; 62 L. J. P. 92 ; 70 L. T. 417 ; 1 R. 651 ; 7 Asp. M. C. 434 207
Petrie *v. Rostrevor* (Owners), [1898] 2 I. R. 556 [C. A.] 170
Phillips *v.* Barnet (1876), 1 Q. B. D. 436 ; 45 L. J. Q. B. 277 ; 34 L. T. 177 ; 24 W. R. 345 41
——— *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832 [C. A.] ; 129 L. T. 777 ; 21 L. G. R. 709 ; 68 Sol. J. 102 ; 39 T. L. R. 530 ; 93 L. J. K. B. 5 29
——— *v.* Eyre (1870), L. R. 4 Q. B. 225 ; 38 L. J. Q. B. 113 ; 19 L. T. 770 ; 17 W. R. 375 ; 9 B. & S. 343 ; affirmed, L. R. 6 Q. B. 1 ; 40 L. J. Q. B. 28 ; 22 L. T. 869 ; 10 B. & S. 1004 45
——— *v.* Homfray (1883), 24 Ch. D. 439 ; 52 L. J. Ch. 833 ; 49 L. T. 5 ; 32 W. R. 6 [C. A.] 67
——— *v.* Jansen (1798), 2 Esp. 624 110
——— *v.* South Western Rail. Co. (1879), 4 Q. B. D. 406 [C. A.] 75
Pickard *v.* Smith (1861), 10 C. B. (N.S.) 470 ; 4 L. T. 470 ... 63
Pictou (Municipality of) *v.* Geldert, [1893] A. C. 524 ; 63 L. J. P. C. 37 ; 69 L. T. 510 ; 42 W. R. 114 ; 1 R. 447 30
Pinet (F.) et Cie *v.* Maison Louis Pinet, Limited, [1898] 1 Ch. 179 ; 67 L. J. Ch. 41 ; 77 L. T. 613 ; 46 W. R. 506 ; 14 T. L. R. 87 ; 15 R. P. C. 65 ... ... 155, 156
Pippin *v.* Sheppard (1822), 11 Price, 400 ; 25 R. R. 746 35
Pittard *v.* Oliver, [1891] 1 Q. B. 474 ; 55 J. P. 100 ; 60 L. J. Q. B. 219 ; 64 L. T. 758 ; 39 W. R. 311 [C. A.] 128
Poiret *v.* Poiret (Jules), Limited, and Nash (1920), 37 R. P. C. 177 156
Polemis and Furness, Withy & Co., *in re*, [1921] 3 K. B. 560 ; 126 L. T. 154 ; 90 L. J. K. B. 1353 ; 27 Com. Cas. 25 ; 37 T. L. R. 940 ; 15 Asp. Mar. Law Cas. 398 : 8, 13, 79, 107, 182, 190
Polley *v.* Fordham, [1904] 2 K. B. 345 ; 68 J. P. 321 ; 73 L. J. K. B. 687 ; 90 L. T. 755 ; 53 W. R. 188 ; 20 T. L. R. 435 : 19, 97
——— *v.* Fordham (No. 2) (1904), 68 J. P. 504 ; 91 L. T. 525 ; 20 T. L. R. 639 19
Polsue & Alfieri, Limited *v.* Rushmer, *see* Rushmer *v.* Polsue & Alfieri, Limited.
Pomfret *v.* Rycroft (1671), 1 Saund. 321 272
Ponting *v.* Noakes, [1894] 2 Q. B. 281 ; 58 J. P. 559 ; 63 L. J. Q. B. 549 ; 70 L. T. 842 ; 42 W. R. 506 ; 10 R. 265 ... 194
Popplewell *v.* Hodkinson (1869), L. R. 4 Ex. 248 ; 38 L. J. Ex. 126 ; 20 L. T. 578 ; 17 W. R. 806 ... ... 243, 244

PAGE

Porter *v.* Freudenberg, [1915] 1 K. B. 857 ; 84 L. J. K. B. 1001 ; 112 L. T. 313 ; 31 T. L. R. 162 ; 59 Sol. J. 216 ; 20 Com. Cas. 189 ; 32 R. P. C. 109 [C. A.] 42
Potter *v.* Faulkner (1861), 1 B. & S. 800 ; 31 L. J. Q. B. 30 ; 5 L. T. 455 ; 10 W. R. 93 ; 8 Jur. (N.S.) 259 209
Poulton *v.* London and South Western Rail. Co. (1867), L. R. 2 Q. B. 534 ; 36 L. J. Q. B. 294 ; 17 L. T. 11 ; 16 W. R. 309 ; 8 B. & S. 616 ... ...43, 58
Powell *v.* Fall (1880), 5 Q. B. D. 597 ; 49 L. J. Q. B. 428 ; 43 L. T. 562 [C. A.] 200
——— *v.* Gelston, [1916] 2 K. B. 615 ; 85 L. J. K. B. 1783 ; 115 L. T. 379 ; 32 T. L. R. 703 ; 60 Sol. J. 696 115
Praed *v.* Graham (1889), 24 Q. B. D. 53 ; 59 L. J. Q. B. 230 ; 38 W. R. 103 [C. A.] 75, 81
Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566 ; [1924] W. N. 58 ; 68 Sol. J. 460 ; 40 T. L. R. 287 ; 130 L. T. 672 ; 93 L. J. K. B. 410 291
Pratt *v.* British Medical Association, [1919] 1 K. B. 244 ; 88 L. J. K. B. 628 ; 120 L. T. 41 ; 35 T. L. R. 14 ; 63 Sol. J. 84 151, 153
——— *v.* Patrick, [1924] 1 K. B. 488 ; [1924] W. N. 12 ; 93 L. J. K. B. 174 ; 22 L. G. R. 185 ; 68 Sol. J. 387 ; 40 T. L. R. 227 ; 130 L. T. 735 38
Préfontaine *v.* Grenier, [1907] A. C. 101 ; 76 L. J. P. C. 4 ; 95 L. T. 623 ; 23 T. L. R. 27 ; 13 Manson, 401 161
Preston *v.* Luck (1884), 27 Ch. D. 497 [C. A.] 86
Pretty *v.* Bickmore (1873), L. R. 8 C. P. 401 ; 28 L. T. 704 ; 21 W. R. 733 ... ... 224, 226
Pridgeon *v.* Mellor (1912), 28 T. L. R. 261 291
Priestley *v.* Fowler (1837), 7 L. J. Ex. 42 ; 3 M. & W. 1 ; M. & H. 305 ; 1 Jur. 987 ; 49 R. R. 495 205
Pritchard *v.* Peto, [1917] 2 K. B. 173 ; 86 L. J. K. B. 1292 ; 117 L. T. 145 ; 15 L. G. R. 860 ... ... 9, 221
Prudential Assurance Co. *v.* Knott (1875), L. R. 10 Ch. 142 ; 44 L. J. Ch. 192 ; 31 L. T. 866 ; 23 W. R. 249 88
Pullman *v.* Hill & Co., [1891] 1 Q. B. 524 ; 60 L. J. Q. B. 299 ; 64 L. T. 691 ; 39 W. R. 263 [C. A.] 114, 123
——— *v.* Pullman (1919), 36 R. P. C. 240 154
Pursell *v.* Horn (1838), 8 A. & E. 602 257
Purves *v.* Landell, (1845) 12 Cl. & F. 91 165
Pym *v.* Great Northern Rail. Co. (1862), 2 B. & S. 759 ; affirmed (1863), 4 B. & S. 396 ; 32 L. J. Q. B. 377 ; 8 L. T. 734 ; 11 W. R. 922 ; 10 Jur. (N.S.) 199 ... ...71, 72

Q.

Quarman *v.* Burnett (1840), 9 L. J. Ex. 308 ; 6 M. & W. 499 ; 4 Jur. 969 ; 55 R. R. 717 56
Quartz Hill Consolidated Gold Mining Co. *v.* Beall (1882), 20 Ch. D. 501 ; 51 L. J. Ch. 874 ; 46 L. T. 746 ; 30 W. R. 583 [C. A.] 126
Quartz Hill Gold Mining Co. *v.* Eyre (1883), 11 Q. B. D. 674 ; 52 L. J. Q. B. 488 ; 49 L. T. 249 ; 31 W. R. 668 [C. A.] ... 131, 136, 138
Quinn *v.* Leathem, [1901] A. C. 495 ; 65 J. P. 708 ; 70 L. J. P. C. 76 ; 85 L. T. 289 ; 50 W. R. 139 ... 11, 149–151, 153
——— *v.* Pratt, [1908] 2 I. R. 69 19

R.

PAGE

R. *v.* Burdett (1820), 4 B. & Ald. 95 ; 22 R. R. 539 113
— *v.* Crewe (Earl), [1910] 2 K. B. 576 ; 79 L. J. K. B. 874 ; 102 L. T. 760 ; 26 T. L. R. 439 [C. A.] 60
— *v.* Ensor (1887), 3 T. L. R. 366 5
— *v.* Evening News, *Times Newspaper*, 11 February, 1925 123, 127
— *v.* Home Secretary. *Ex parte* O'Brien, [1923] 2 K. B. 361 ; 21 L. G. R. 419 ; 67 Sol. J. 553 ; 39 T. L. R. 487 ; 92 L. J. K. B. 797 ; 129 L. T. 419 ; 27 Cox, C. C. 433 ; 87 J. P. 166 259
— *v.* Ivens (1835), 7 C. & P. 213 272
— *v.* Jackson, [1891] 1 Q. B. 671 ; 55 J. P. 246 ; 60 L. J. Q. B. 346 ; 64 L. T. 679 ; 39 W. R. 407 [C. A.] 262
— *v.* Labouchere (1880), 14 Cox, C. C. 419 116
— *v.* Pease (1832), 2 L. J. M. C. 26 ; 4 B. & Ad. 30 ; 1 Nev. & M. 690 ; 38 R. R. 207 221
— *v.* Port of London Authority, *Ex parte* Kynoch, Limited, [1919] 1 K. B. 176 ; 83 J. P. 41 ; 88 L. J. K. B. 553 ; 120 L. T. 177 ; 35 T. L. R. 103 [C. A.] 98
— *v.* Rosewell (1699), 2 Salk. 459 240
— *v.* Train (1862), 2 B. & S. 640 ; 31 L. J. M. C. 169 ; 10 W. R. 539 ; 3 F. & F. 22 ; 8 Jur. (N.S.) 1151 ; 9 Cox, C. C. 180 221
— *v.* Ward (1836), 4 A. & E. 384 221
Radley *v.* London and North Western Rail. Co. (1876), 1 App. Cas. 754 ; 46 L. J. Ex. 573 ; 35 L. T. 637 ; 25 W. R. 147 179, 180
Rainham Chemical Works *v.* Belvedere Fish Guano Co., Limited, [1921] 2 A. C. 465 ; [1921] W. N. 281 ; 90 L. J. K. B. 1252 ; 19 L. G. R. 657 ; 66 Sol. J. 36 (7) ; 37 T. L. R. 973 ... 45, 189, 190
Raleigh *v.* Goschen, [1898] 1 Ch. 73 ; 67 L. J. Ch. 59 ; 77 L. T. 429 ; 14 T. L. R. 36 ; 46 W. R. 90 61
Ratcliffe *v.* Evans, [1892] 2 Q. B. 524 ; 56 J. P. 837 ; 61 L. J. Q. B. 535 ; 66 L. T. 794 ; 40 W. R. 578 [C. A.] ... 108, 130
Rawlings *v.* Till (1837), 3 M. & W. 28 257
Rawstron *v.* Taylor (1855), 25 L. J. Ex. 33 ; 11 Ex. 369 251
Read *v.* Coker (1853), 13 C. B. 850 ; 22 L. J. C. P. 201 ; 1 W. R. 413 ; 1 C. L. R. 746 ; 17 Jur. 990 256
—— *v.* Edwards (1864), 34 L. J. C. P. 31 ; 11 L. T. 311 ; 5 N. R. 48 ; 17 C. B. (N.S.) 245 288
—— *v.* Great Eastern Rail. Co. (1868), L. R. 3 Q. B. 555 ; 37 L. J. Q. B. 278 ; 18 L. T. 82 ; 16 W. R. 1040 ; 9 B. & S. 714 ... 71
Readhead *v.* Midland Rail. Co. (1869), L. R. 4 Q. B. 379 ; 38 L. J. Q. B. 169 167
Reddaway *v.* Banham, [1896] A. C. 199 ; 65 L. J. Q. B. 381 ; 74 L. T. 289 ; 44 W. R. 638 ... ... 154, 156
———— *v.* Bentham Hemp-Spinning Co., [1892] 2 Q. B. 639 ; 67 L. T. 301 [C. A.] 155
Reddie *v.* Scoolt (1794), 1 Peake, 240 147
Rederiaktiebolaget Amphitrite *v.* The King, [1921] 3 K. B. 500 ; [1921] W. N. 279 ; 37 T. L. R. 985 17
Redgrave *v.* Hurd (1881), 20 Ch. D. 1 ; 51 L. J. Ch. 118 ; 45 L. T. 489 ; 30 W. R. 251 [C. A.] 159
Reed *v.* Nutt (1890), 24 Q. B. D. 669 ; 54 J. P. 599 ; 59 L. J. Q. B. 311 ; 62 L. T. 635 ; 38 W. R. 621 270

PAGE
Reedie *v.* London and North Western Rail. Co., Hobbit *v.* Same (1849), 20 L. J. Ex. 65 ; 4 Ex. 244 ; 6 Rail. Cas. 184 ... 65
Reid *v.* British and Irish Steam Packet Co., Limited, [1921] 2 K. B. 319 ; 90 L. J. K. B. 480 ; 37 T. L. R. 362 ; 65 Sol. J. 326 ; 14 B. W. C. C. 20 [C. A.] 215
Reinhardt *v.* Mentasti (1889), 42 Ch. D. 685 ; 58 L. J. Ch. 787 ; 61 L. T. 328 ; 38 W. R. 10 233
Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28 ; [1923] W. N. 252 ; 68 Sol. J. 61 ; 39 T. L. R. 710 ; 93 L. J. Ch. 70 ; 130 L. T. 341 152
Rhodes *v.* Smethurst (1838), 7 L. J. Ex. 273 ; 4 M. & W. 42 ; 1 H. & H. 237 ; 2 Jur. 893 ; affirmed in error (1840), 6 M. & W. 351 ; 9 L. J. Ex. 330 ; 4 Jur. 702 ... ... 93, 96, 280
Rice *v.* Reed, [1900] 1 Q. B. 54 ; 69 L. J. Q. B. 33 ; 81 L. T. 410 [C. A.] 294
Rich *v.* Basterfield (1847), 4 C. B. 783 ; 6 L. J. C. P. 273 ; 2 Car. & K. 257 ; 11 Jur. 696 ; 72 R. R. 716 236
Richards *v.* Jenkins (1886), 17 Q. B. D. 544 279
Richardson *v.* Atkinson (1723), 1 Stra. 576 285
——— *v.* Silvester (1873), L. R. 9 Q. B. 34 ; 43 L. J. Q. B. 1 ; 29 L. T. 395 ; 22 W. R. 74 158
Rickards *v.* Lothian, [1913] A. C. 263 ; 82 L. J. P. C. 42 ; 108 L. T. 225 ; 29 T. L. R. 281 ; 57 Sol. J. 281 ; 50 Sc. L. R. 666 : 15, 193, 196
Ridge *v.* "English Illustrated Magazine," Limited (1913), 29 T. L. R. 592 105
Robbins *v.* Jones (1863), 15 C. B. (N.S.) 221... 222
Roberts *v.* Roberts (1864), 5 B. & S. 384 ; 33 L. J. Q. B. 249 ; 10 L. T. 602 ; 12 W. R. 909 ; 10 Jur. (N.S.) 1027 ... 108
——— *v.* Rose (1865), L. R. 1 Ex. 82 ; 35 L. J. Ex. 62 ; 13 L. T. 471 ; 14 W. R. 225 ; 4 H. & C. 103 ; 12 Jur. (N.S.) 78 ... 239
Rodgers *v.* Nowill (1847), 5 C. B. 109 ; 17 L. J. C. P. 52 ; 11 Jur. 1039... 154
Rodgers (Joseph) & Sons *v.* Rodgers (W. N.) & Co. (1924), 41 R. P. C. 277 ... ... 154, 155
Roff *v.* British and French Chemical Manufacturing Co., [1918] 2 K. B. 677 ; 87 L. J. K. B. 996 ; 119 L. T. 436 ; 34 T. L. R. 485 ; 62 Sol. J. 620 [C. A.] 114, 127
Rooth *v.* Wilson (1817), 1 B. & A. 59 289
Roper *v.* Public Works Commissioners, [1915] 1 K. B. 45 ; 84 L. J. K. B. 219 ; 111 L. T. 630 60
Rose *v.* Buckett, [1901] 2 K. B. 449 ; 70 L. J. K. B. 736 ; 84 L. T. 670 ; 50 W. R. 8 [C. A.] 68, 69
Rosewell *v.* Prior (1702), 2 Salk. 460 236
Rourke *v.* White Moss Co. (1877), 2 C. P. D. 205 ; 46 L. J. C. P. 283 ; 36 L. T. 49 ; 25 W. R. 263 [C. A.] 57
Rowbotham *v.* Wilson (1860), 30 L. J. Q. B. 49 ; 2 L. T. 642 ; 8 H. L. Cas. 348 ; 6 Jur. (N.S.) 965 243
Rowland *v.* Wright (1908), 77 L. J. K. B. 1071 ; 24 T. L. R. 852 [C. A.] 214
Royal Aquarium and Summer and Winter Garden Society *v.* Parkinson, [1892] 1 Q. B. 431 ; 56 J. P. 404 ; 61 L. J. Q. B. 409 ; 66 L. T. 513 ; 40 W. R. 450 [C. A.] 123, 128
Royal Baking Powder Co. *v.* Wright, Crossley & Co. (1898), 15 R. P. C. 677 110
Royal London Mutual Insurance Society *v.* Williamson (1921), 37 T. L. R. 742 149

PAGE

Royal Trust Co. *v.* Canadian Pacific Rail. Co. (1922), 38 T. L. R. 899 [P. C.] 72

Ruoff *v.* Long & Co., [1916] 1 K. B. 148; 80 J. P. 158; 85 L. J. K. B. 364; 114 L. T. 186; 32 T. L. R. 82; 60 Sol. J. 323: 178, 193

Rushmer *v.* Polsue & Alfieri, Limited (1905), 21 T. L. R. 183; affirmed, [1906] 1 Ch. 234; 75 L. J. Ch. 79; 93 L. T. 823; 54 W. R. 161; 22 T. L. R. 139 [C. A.]; affirmed Polsue & Alfieri, Limited *v.* Rushmer, [1907] A. C. 121; 76 L. J. Ch. 365; 96 L. T. 510; 23 T. L. R. 362 234

Russell *v.* Corser, [1921] 1 A. C. 351; 90 L. J. P. C. 77; 124 L. T. 548; 37 T. L. R. 244; 65 Sol. J. 239; 13 B. W. C. C. 476 213

——— *v.* Men of Devon, 2 T. R. 667 ... ...29, 30

——— *v.* Shenton (1842), 3 Q. B. 449; 11 L. J. Q. B. 289; 2 G. & D. 573; 6 Jur. 1059; 61 R. R. 249 ... ... 235, 236

Rust *v.* Victoria Graving Dock Co. and London and St. Katherine's Dock Co. (1887), 36 Ch. D. 113; 56 L. T. 216; 35 W. R. 673 [C. A.] 76

Ryall *v.* Kidwell & Son, [1914] 3 K. B. 135; 78 J. P. 377; 83 L. J. K. B. 1140; 111 L. T. 240; 30 T. L. R. 503; 12 L. G. R. 997 [C. A.] 169, 227

Ryan *v.* Clark (1849), 14 Q. B. 65 ... ... 273, 275

—— *v.* Oceanic Steam Navigation Co., Limited, [1914] 3 K. B. 731; 83 L. J. K. B. 1553; 110 L. T. 641; 30 T. L. R. 302; 58 Sol. J. 303; 12 Asp. M. L. C. 466 [C. A.] 72

Rylands *v.* Fletcher, *see* Fletcher *v.* Rylands.

S.

Sadgrove *v.* Hole, [1901] 2 K. B. 1; 70 L. J. K. B. 455; 84 L. T. 647; 49 W. R. 473 [C. A.] 113

Sadler *v.* Great Western Rail. Co., [1896] A. C. 450; 65 L. J. Q. B. 462; 74 L. T. 561; 45 W. R. 51 47

——— *v.* South Staffordshire and Birmingham District Steam Tramways Co. (1889), 23 Q. B. D. 17; 53 J. P. 694; 58 L. J. Q. B. 421; 37 W. R. 582 [C. A.] 258

St. Helen's Smelting Co. *v.* Tipping (1865), 35 L. J. Q. B. 66; 12 L. T. 776; 13 W. R. 1083; 11 H. L. Cas. 642; 11 Jur. (N.S.) 785 ... ...232, 233, 234

Salomons *v.* Knight, [1891] 2 Ch. 294; 60 L. J. Ch. 743; 64 L. T. 589; 39 W. R. 506 [C. A.] 87

Salt Lake City *v.* Hollister (1885), 118 U. S. 256 43

Salt Union *v.* Brunner, Mond & Co., [1906] 2 K. B. 822; 76 L. J. K. B. 55; 95 L. T. 647; 22 T. L. R. 835 244

Salvin *v.* North Brancepeth Coal Co. (1874), 9 Ch. 705 [C. A.] 230, 232

Samson *v.* Aitchison, [1912] A. C. 844; 82 L. J. P. C. 1; 107 L. T. 106; 28 T. L. R. 559 38

Sarson *v.* Roberts, [1895] 2 Q. B. 395; 59 J. P. 643; 65 L. J. Q. B. 37; 73 L. T. 174; 43 W. R. 690; 14 R. 616 [C. A.] ... 169

Saunders *v.* Holborn District Board of Works, [1895] 1 Q. B. 64; 59 J. P. 453; 64 L. J. Q. B. 101; 71 L. T. 519; 43 W. R. 26; 15 R. 25 29

——— *v.* Merryweather (1865), 35 L. J. Ex. 115; 13 W. R. 814; 3 H. & C. 902; 11 Jur. (N.S.) 655 279

PAGE
Saxby *v.* Manchester and Sheffield Rail. Co. (1869), L. R. 4 C. P. 198; 38 L. J. C. P. 153; 19 L. T. 640; 17 W. R. 293 237
Sayers *v.* Collyer (1884), 28 Ch. D. 103; 49 J. P. 244; 54 L. J. Ch. 1; 51 L. T. 723; 33 W. R. 91 [C. A.] 85, 86
Schaffenius *v.* Goldberg, [1916] 1 K. B. 284; 85 L. J. K. B. 374; 113 L. T. 949; 32 T. L. R. 133; 60 Sol. J. 105 [C. A.] ... 42
Scotland *v.* South African Territories (1917), 142 L. T. Jo. 366; 33 T. L. R. 255 42
Scott *v.* London Dock Co. (1865), 3 H. & C. 596; 34 L. J. Ex. 220; 13 L. T. 148; 13 W. R. 410; 11 Jur. (N.S.) 204 183, 184
——— *v.* Nixon (1843), 3 Dru. & War. 388; 2 Con. & L. 185; 6 Ir. Eq. R. 8 95
——— *v.* Sampson (1882), 8 Q. B. D. 491; 46 J. P. 408; 51 L. J. Q. B. 380; 46 L. T. 412; 30 W. R. 541 82
——— *v.* Shepherd (1763), 2 Wm. Bl. 892; 3 Wils. K. B. 403 15, 261
——— *v.* Stansfield (1868), L. R. 3 Ex. 220; 37 L. J. Ex. 155; 18 L. T. 572; 16 W. R. 911 [C. A.] 17, 121
Scully *v.* Scully (1921), *Times*, June 24th 262
Seaman *v.* Netherclift (1876), 2 C. P. D. 53; 46 L. J. C. P. 128; 35 L. T. 784; 25 W. R. 159 [C. A.] 121
Semayne's Case (1605), 5 Co. Rep. 91 c; 1 Sm. L. C. 104 ... 272
Senior *v.* Ward (1859), 1 El. & El. 385; 28 L. J. Q. B. 139; 7 W. R. 261; 5 Jur. (N.S.) 172 205
Seroka *v.* Kattenburg (1886), 17 Q. B. D. 177; 55 L. J. Q. B. 375; 54 L. T. 649; 34 W. R. 543 ... ... 49, 50
Serrao *v.* Noel (1885), 15 Q. B. D. 549 [C. A.] 86
Sewell *v.* National Telephone Co., Limited, [1907] 1 K. B. 557; 76 L. J. K. B. 196; 96 L. T. 483; 23 T. L. R. 226 [C. A.]: 132, 264
Shapiro *v.* La Morta, [1923] W. N. 290; 68 Sol. J. 142; 40 T. L. R. 39 130
Sharp *v.* Harrison, [1922] 1 Ch. 502; [1922] W. N. 113; 91 L. J. Ch. 442 ... ... 85, 86
Sharpington *v.* Fulham Guardians, [1904] 2 Ch. 449; 68 J. P. 510; 73 L. J. Ch. 777; 91 L. T. 739; 52 W. R. 617; 20 T. L. R. 643 98
Sheehan *v.* Dreamland, Margate, Limited, 40 T. L. R. 155 [C. A.] 9, 172
Shelfer *v.* City of London Electric Lighting Co., Meux's Brewery Co. *v.* City of London Electric Lighting Co., [1895] 1 Ch. 287; 64 L. J. Ch. 216; 72 L. T. 34; 43 W. R. 238; 12 R. 112 [C. A.] 86
Shepheard *v.* Whitaker (1875), L. R. 10 C. P. 502; 32 L. T. 402 ... 105
Shipman *v.* Shipman, [1924] 2 Ch. 140 [C. A.]; [1924] W. N. 119; 68 Sol. J. 498; 93 L. J. Ch. 382; 131 L. T. 394 ... 41, 42
Simmons *v.* Mitchell (1880), 6 App. Cas. 156; 45 J. P. 237; 50 L. J. P. C. 11; 43 L. T. 710; 29 W. R. 401 110
Simpson *v.* Savage (1856), 1 C. B. (N.S.) 347; 26 L. J. C. P. 50; 5 W. R. 147; 3 Jur. (N.S.) 161 239
"Singer" Machine Manufacturers *v.* Wilson (1877), 3 App. Cas. 376; 47 L. J. Ch. 481; 38 L. T. 303; 26 W. R. 664 ... 155
Six Carpenters' Case (1611), 1 Sm. L. C. 132; 8 Co. Rep. 146 a 272, 273
Slater *v.* Swann (1730), 2 Stra. 872 288
Smith *v.* Baker (1873), L. R. 8 C. P. 350; 42 L. J. C. P. 155; 28 L. T. 637 294
——— *v.* Baker & Sons, [1891] A. C. 325; 55 J. P. 660; 60 L. J. Q. B. 683; 65 L. T. 467; 40 W. R. 392 ... 185, 187
——— *v.* Chadwick (1884), 9 App. Cas. 187; 48 J. P. 644; 53 L. J. Ch. 873; 50 L. T. 697; 32 W. R. 687 157

PAGE

Smith *v.* Giddy, [1904] 2 K. B. 448 ; 73 L. J. K. B. 894 ; 91 L. T. 296 ; 20 T. L. R. 596 231
—— *v.* Kaye (1904), 20 T. L. R. 261 143
—— *v.* Lloyd (1854), 23 L. J. Ex. 194 ; 9 Ex. 562 ; 2 C. L. R. 208 ; 2 W. R. 271 281
—— *v.* London and South Western Rail. Co. (1870), L. R. 6 C. P. 14 ; 40 L. J. C. P. 21 ; 23 L. T. 678 ; 19 W. R. 230 ... ... 23, 163, 200, 201
—— *v.* Marrable (1843), 11 M. & W. 5 ; Car. & M. 479 ; 12 L. J. Ex. 223 168
—— *v.* Selwyn, [1914] 3 K. B. 98 ; 83 L. J. K. B. 1339 ; 111 L. T. 195 [C. A.]... ... ... 24, 25
—— *v.* Streatfield, [1913] 3 K. B. 764 ; 82 L. J. K. B. 1237 ; 109 L. T. 173 ; 29 T. L. R. 707 114
—— *v.* Thackerah (1866), L. R. 1 C. P. 564 ; 35 L. J. C. P. 276 ; 14 L. T. 761 ; 14 W. R. 832 ; 12 Jur. (N.S.) 545 ; 1 H. & R. 615 243
Snag *v.* Gee (1597), 4 Co. Rep. 16 a 109
Snark, The, [1899] P. 74 ; 68 L. J. P. 22 ; 80 L. T. 25 ; 47 W. R. 398 ; 15 T. L. R. 170 ; 8 Asp. M. L. C. 483 ; affirmed [1900] P. 105 ; 69 L. J. P. 41 ; 82 L. T. 42 ; 16 T. L. R. 160 ; 9 Asp. M. L. C. 50 [C. A.] 65
Société Maritime Française *v.* Shanghai Dock Co., [1921] 2 A. C. 417 n. ; 90 L. J. P. C. 85 ; 125 L. T. 134 ; 137 T. L. R. 379 57
Soltau *v.* De Held (1851), 2 Sim. (N.S.) 133 ; 21 L. J. Ch. 153 ; 16 Jur. 326 ... ... 219, 231
Sorrell *v.* Smith, [1924] 1 Ch. 506 [C. A.] ; [1924] W. N. 107 ; 40 T. L. R. 515 ; 93 L. J. Ch. 241 ; 131 L. T. 195 ; 68 Sol. J. 705 ... ... 10, 12
Southee *v.* Denny (1847), 1 Ex. 196 ; 17 L. J. Ex. 151 110
South Hetton Coal Co. *v.* North Eastern News Association, [1894] 1 Q. B. 133 ; 58 J. P. 196 ; 63 L. J. Q. B. 293 ; 68 L. T. 844 ; 42 W. R. 322 ; 9 R. 240 [C. A.] 42, 103, 106
South Staffordshire Water Co. *v.* Sharman, [1896] 2 Q. B. 44 ; 65 L. J. Q. B. 460 ; 74 L. T. 761 ; 44 W. R. 653 293
Spackman *v.* Foster (1883), 11 Q. B. D. 99 ; 47 J. P. 455 ; 52 L. J. Q. B. 418 ; 48 L. T. 670 ; 31 W. R. 548 94
Spalding (A. G.) *v.* Gamage (A. W.) Limited, [1914] 2 Ch. 405 ; 83 L. J. Ch. 855 ; 31 R. P. C. 423 ; 111 L. T. 829 ; [1914] W. N. 29 ; 58 Sol. J. 722 154
Speight *v.* Gosnay (1891), 55 J. P. 501 ; 60 L. J. Q. B. 231 [C. A.]... 108
Spoor *v.* Green (1874), L. R. 9 Ex. 99 ; 43 L. J. Ex. 57 ; 30 L. T. 393 ; 22 W. R. 547 94
Stanley *v.* Powell, [1891] 1 Q. B. 86 ; 55 J. P. 327 ; 60 L. J. Q. B. 52 ; 63 L. T. 809 ; 39 W. R. 76 ... ... 8, 10, 258
Stearn *v.* Prentice Brothers, Limited, [1919] 1 K. B. 394 ; 88 L. J. K. B. 422 ; 120 L. T. 445 ; 35 T. L. R. 207 ; 63 Sol. J. 229 ; 17 L. G. R. 142 ... ... 87, 229
Stedman *v.* Smith (1857), 8 El. & B. 1 ; 26 L. J. Q. B. 314 ; 3 Jur. (N.S.) 1248 276
Stevens *v.* Chown, Stevens *v.* Clark, [1901] 1 Ch. 894 ; 65 J. P. 470 ; 70 L. J. Ch. 571 ; 84 L. T. 796 ; 49 W. R. 460 ; 17 T. L. R. 313... 27
—— *v.* Midland Rail. Co. (1854), 10 Ex. 352 ; 23 L. J. Ex. 328 ; 18 Jur. 932 ; 2 C. L. R. 1300 136

PAGE
Stockdale *v.* Hansard (1839), 9 A. & E. 1; 2 P. & D. 1; 8 L. J. Q. B. 294; 3 Jur. 905; 48 R. R. 326 120
Stollmeyer *v.* Trinidad Lake Petroleum Co., [1918] A. C. 485, 498; 87 L. J. P. C. 77, 83; 118 L. T. 514, 518 ... 89, 250
Stone, *Ex parte*, *Re* Giles (1889), 61 L. T. 82; 37 W. R. 767; 6 Morrell, 158 69
——— *v.* Cartwright (1795), 6 T. R. 411; 3 R. R. 220 61
Stoomvaart, The, (1882) 5 App. Cas. 876 186
Storey *v.* Ashton (1869), L. R. 4 Q. B. 476; 38 L. J. Q. B. 223; 10 B. & S. 337; 17 W. R. 727 ... ... 55, 57
Stott *v.* Gamble, [1916] 2 K. B. 504; 80 J. P. 443; 85 L. J. K. B. 1750; 115 L. T. 309; 32 T. L. R. 579; 14 L. G. R. 769 11
Street *v.* Licensed Victuallers' Society (1874), 22 W. R. 553 ... 113
——— *v.* Tugwell (1800), Selwyn's N. P., 13th ed., 1070 ... 231
Stroyan *v.* Knowles, Hamer *v.* Same (1861), 6 H. & N. 454 245, 246
Stuart *v.* Bell, [1891] 2 Q. B. 341; 60 L. J. Q. B. 577; 64 L. T. 633; 39 W. R. 612 [C. A.] 122, 125
——— *v.* Evans (1883), 49 L. T. 138; 31 W. R. 706 211
Stubbs, Limited *v.* Mazure, [1920] A. C. 66; 88 L. J. P. C. 135; 122 L. T. 5; 35 T. L. R. 697; 25 Com. Cas. 36; *sub nom.* Mazure *v.* Stubbs, Limited, 56 Sc. L. R. 535 ... ... 104, 105
——— *v.* Russell, [1913] A. C. 386; 82 L. J. P. C. 98; 108 L. T. 529; 29 T. L. R. 409; [1913] S. C. (H. L.) 14; 50 Sc. L. R. 676 ... ... 104, 105
Sturges *v.* Bridgman (1879), 11 Ch. D. 852; 48 L. J. Ch. 785; 41 L. T. 219; 28 W. R. 200 [C. A.] 235, 238
Suarez, *In re*; Suarez *v.* Suarez, [1918] 1 Ch. 176 [C. A.]; 87 L. J. Ch. 173; 118 L. T. 279; [1917] W. N. 372; 34 T. L. R. 127; 62 Sol. J. 158 43
Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746; 40 T. L. R. 765 168
Sutherland *v.* Stopes, [1925] A. C. 47 ... ... 117, 118
Swainson *v.* North Eastern Rail. Co. (1878), 3 Ex. D. 341; 47 L. J. Ex. 372; 38 L. T. 201; 26 W. R. 413 [C. A.] 207
Swan *v.* Sinclair, [1925] A. C. 227 252
Swansea Vale, The (Owners) *v.* Rice (1911), 27 T. L. R. 440; 55 Sol. J. 497 214
Sweeney *v.* Coote, [1907] A. C. 221; 76 L. J. P. C. 49; 96 L. T. 748; 23 T. L. R. 448 153
Swift *v.* Jewsbury (1874), L. R. 9 Q. B. 301; 43 L. J. Q. B. 56; 30 L. T. 31; 22 W. R. 319 ... ... 52, 160
Swire *v.* Leach (1865), 18 C. B. (N.S.) 479 293
Sydney Municipal Council *v.* Bourke, [1895] A. C. 433; 59 J. P. 659; 64 L. J. P. C. 140; 72 L. T. 605; 11 R. 482 30

T.

Tackey *v.* McBain, [1912] A. C. 186; 81 L. J. P. C. 130; 106 L. T. 226; 49 Sc. L. R. 1015 157
Taff Vale Railway *v.* Amalgamated Society of Railway Servants, [1901] A. C. 426; 65 J. P. 596; 70 L. J. K. B. 905; 85 L. T. 147; 50 W. R. 44 ... ... 43, 45

PAGE

Taff Vale Rail. Co. *v.* Jenkins, [1913] A. C. 1 ; 82 L. J. K. B. 49 ; 107 L. T. 564 ; 29 T. L. R. 19 ; 57 Sol. J. 27 72
Tancred *v.* Allgood (1859), 28 L. J. Ex. 362 ; 4 H. & N. 438 ... 289
Tarleton *v.* M'Gawley (1793), 1 Peake, 205 ; 3 R. R. 689 ... 151
Tarrant *v.* Webb (1856), 18 C. B. 797 ; 25 L. J. C. P. 261 ; 4 W. R. 640 205
Tarry *v.* Ashton (1876), 1 Q. B. D. 314 ; 45 L. J. Q. B. 260 ; 34 L. T. 97 ; 24 W. R. 581 ... ... 66, 221
Taunton *v.* Costar (1797), 7 T. R. 431 ; 4 R. R. 481 273
Taylor *v.* Dumbarton Burgh and County Tramways Co., Limited, [1918] S. C. (H. L.) 96 ; 55 Sc. L. R. 443 182
—— *v.* Hawkins (1851), 16 Q. B. 308 ; 20 L. J. Q. B. 313 ; 15 Jur. 746 125
—— *v.* Manchester, etc. Rail. Co., [1895] 1 Q. B. 134 ; 59 J. P. 100 ; 64 L. J. Q. B. 6 ; 71 L. T. 596 ; 43 W. R. 120 ; 14 R. 34 [C. A.] 34, 166
—— *v.* Pritchard, [1910] 2 K. B. 320 ; 74 J. P. 372 ; 79 L. J. K. B. 749 ; 103 L. T. 224 ; 26 T. L. R. 496 260
Temperton *v.* Russell, [1893] 1 Q. B. 715 ; 57 J. P. 676 ; 62 L. J. Q. B. 412 ; 69 L. T. 78 ; 41 W. R. 565 ; 4 R. 376 [C. A.] 149, 150
Tenant *v.* Goldwin (1704), 1 Salk. 360 ; 2 Ld. Raym. 1089 ... 190
Terry *v.* Hutchinson (1868), L. R. 3 Q. B. 599 ; 37 L. J. Q. B. 257 ; 18 L. T. 521 ; 16 W. R. 932 ; 9 B. & S. 487 ... 144, 145, 146, 147
Tharpe *v.* Stallwood (1843), 12 L. J. C. P. 241 ; 5 Man. & G. 760 ; 6 Sco. N. R. 715 ; 7 Jur. 492 ; 1 D. & L. 24 ; 73 R. R. 974... 289
Theyer *v.* Purnell, [1918] 2 K. B. 333 ; 119 L. T. 285 ; 16 L. G. R. 840 197
Thomas *v.* Bradbury, Agnew & Co., Limited, [1906] 2 K. B. 627 ; 75 L. J. K. B. 726 ; 95 L. T. 23 ; 54 W. R. 608 ; 22 T. L. R. 656 [C. A.] 119
——— *v.* Quartermaine (1887), 18 Q. B. D. 685 ; 51 J. P. 516 ; 56 L. J. Q. B. 340 ; 57 L. T. 537 ; 35 W. R. 555 [C. A.] 24, 211
——— *v.* Winchester (1852), 6 New York State Reports, 397 37, 174
Thompson *v.* Bernard (1807), 1 Camp. 48 109
———— *v.* Brighton Corporation, Oliver *v.* Horsham Local Board, [1894] 1 Q. B. 332 ; 58 J. P. 297 ; 63 L. J. Q. B. 181 ; 70 L. T. 206 ; 42 W. R. 161 ; 9 R. 111 30, 31
———— *v.* British Medical Association (N.S.W. Branch), [1924] A. C. 764 ; 68 Sol. J. 518 ; 40 T. L. R. 506 ; 131 L. T. 162 ; 93 L. J. P. C. 203 152
———— *v.* Ross (1858), 5 H. & N. 16 ; 29 L. J. Ex. 1 ; 1 L. T. 43 ; 8 W. R. 44 ; 5 Jur. (N.S.) 1133 146
Thomson *v.* Clanmorris (Lord), [1900] 1 Ch. 718 ; 69 L. J. Ch. 337 ; 82 L. T. 277 ; 48 W. R. 488 ; 16 T. L. R. 296 [C. A.] ... 93
Thorley's Cattle Food Co. *v.* Massam (1880), 14 Ch. D. 763 ; 42 L. T. 851 ; 28 W. R. 966 [C. A.] 88
Thorne *v.* Heard, [1894] 1 Ch. 599 [C. A.] ; affirmed, [1895] A. C. 495 ; 64 L. J. Ch. 652 ; 73 L. T. 291 ; 44 W. R. 155 ; 11 R. 254 93
Thorpe *v.* Brumfitt (1873), L. R. 8 Ch. 650 253
Tillett *v.* Ward (1882), 10 Q. B. D. 17 ; 47 J. P. 438 ; 52 L. J. Q. B. 61 ; 47 L. T. 546 ; 31 W. R. 197 198
Tilling (T.), Limited *v.* Dick, Kerr & Co., Limited, [1905] 1 K. B. 562 ; 74 L. J. K. B. 359 ; 53 W. R. 380 ; 21 T. L. R. 281 ... 98
Timothy *v.* Simpson (1835), 4 L. J. M. C. 73 ; 1 Cr. M. & R. 757 ; 5 Tyr. 244 ; 6 Car. & P. 499 ; 40 R. R. 722 268

PAGE
Tinkley *v.* Tinkley, (1909) 25 T. L. R. 264 [C. A.] 41
Tipping *v.* St. Helen's Smelting Co. (1865), L. R. 1 Ch. 66 87, 230
Tobin *v.* R., (1864) 16 C. B. (N.S.) 310; 33 L. J. P. C. 199; 10 L. T. 762; 10 Jur. (N.S.) 1029; 12 W. R. 145 43
Todd *v.* Flight (1860), 9 C. B. (N.S.) 377; 30 L. J. C. P. 21; 3 L. T. 325; 9 W. R. 145; 7 Jur. (N.S.) 291 ... ... 231, 236
Toogood *v.* Spyring (1834), 1 Cr. M. & R. 181; 4 Tyr. 582; 3 L. J. Ex. 347; 40 R. R. 523 122
Toronto Rail. Co. *v.* King, [1908] A. C. 260; 77 L. J. P. C. 77; 98 L. T. 650 185
Tough *v.* North British Rail. Co., [1914] S. C. 291; 51 Sc. L. R. 225 167
Trebeck *v.* Croudace, [1918] 1 K. B. 158; 82 J. P. 69; 87 L. J. K. B. 273; 118 L. T. 141; 34 T. L. R. 57; 62 Sol. J. 85; 16 L. G. R. 82 [C. A.] 268
Trim Joint District School Board *v.* Kelly, [1914] A. C. 667; 83 L. J. P. C. 220; 111 L. T. 305; 30 T. L. R. 452; 58 Sol. J. 493; 7 B. W. C. C. 274; 48 I. L. T. 141 214
Trinidad Asphalt Co. *v.* Ambard, [1899] 2 Ch. 260 n.; A. C. 594; 68 L. J. P. C. 114; 81 L. T. 132; 48 W. R. 116 244
Tubantia, The, [1924] P. 78; 40 T. L. R. 335; 93 L. J. P. 148; 131 L. T. 570 ... ... 39, 285
Tubervil *v.* Stamp (1697), 1 Salk. 13 199
Tuberville *v.* Savage (1669), 1 Mod. Rep. 3 257
Tuckwood *v.* Rotherham Corporation, [1921] 1 K. B. 526 [C. A.]; 85 J. P. 101; 90 L. J. K. B. 341; 124 L. T. 522; 13 B. W. C. C. 327; 19 L. G. R. 69 ... ... 92, 97, 217
Tuff *v.* Warman (1857), 2 C. B. (N.S.) 740, affirmed (1858), 5 C. B. (N.S.) 573; 27 L. J. C. P. 322; 6 W. R. 693; 5 Jur. (N.S.) 222: 180
Tullidge *v.* Wade (1769), 3 Wils. 18 ... ... 76, 82, 148, 270
Turner *v.* Coates (1916), 33 T. L. R. 79 178
——— *v.* Doe *d.* Bennett (1842), 11 L. J. Ex. 453; 9 M. & W. 643; 60 R. R. 850 279
——— *v.* Kingsbury Collieries, Limited, [1921] W. N. 184; 37 T. L. R. 713 216
——— *v.* Stallibrass, [1898] 1 Q. B. 56; 67 L. J. Q. B. 52; 77 L. T. 482; 46 W. R. 81 [C. A.] 33, 34, 173
Turton *v.* Turton (1889), 42 Ch. D. 128; 61 L. T. 571; 38 W. R. 22 [C. A.] 155, 156
Twycross *v.* Grant (1878), 4 C. P. D. 40; 48 L. J. C. P. 1; 39 L. T. 616; 27 W. R. 87 [C. A.] 68

U.

United Merthyr Collieries Co., *Re* (1872), L. R. 15 Eq. 46; 21 W. R. 117 78
Upton *v.* Great Central Rail. Co., [1924] A. C. 302; [1924] W. N. 21; 93 L. J. K. B. 224; 16 B. W. C. C. 269; 68 Sol. J. 251; 40 T. L. R. 204; 130 L. T. 577; [1924] W. C. & Ins. Rep. 21 ... 213
Utley *v.* Mitre Publishing Co. (1901), 17 T. L. R. 720 50

V.

Vacher & Sons, Limited *v.* London Society of Compositors, [1913] A. C. 107; 82 L. J. K. B. 232; 107 L. T. 722; 29 T. L. R. 73; 57 Sol. J. 75; 50 Sc. L. R. 649 11
Valeria, The, [1922] 2 A. C. 242 78

PAGE

Van Oppen & Co., Limited *v.* Tredegars, Limited (1921), 37 T. L. R. 504 283
Vaughan *v.* Menlove (1837), 6 L. J. C. P. 92 ; 3 Bing. N. C. 468 ; 4 Scott, 244 ; 3 Hodges, 51 ; 1 Jur. 215 ; 43 R. R. 711 199
——— *v.* Taff Vale Rail. Co. (1860), 29 L. J. Ex. 247 ; 2 L. T. 394 ; 8 W. R. 549 ; 5 H. & N. 679 ; 6 Jur. (N.S.) 899 22, 201
Venables *v.* Smith (1877), 2 Q. B. D. 279 ; 46 L. J. Q. B. 470 ; 36 L. T. 509 ; 25 W. R. 584 56
Vere *v.* Cawdor (Lord) (1809), 11 East, 568 ; 11 R. R. 268 ... 288
Verry *v.* Watkins (1836), 7 C. & P. 308 82
Vine, *Ex parte*, *Re* Wilson (1878), 8 Ch. D. 364 ; 47 L. J. Bk. 116 ; 38 L. T. 730 ; 26 W. R. 582 [C. A.] 69
Vizetelly *v.* Mudie's Select Library, Limited, [1900] 2 Q. B. 170 ; 69 L. J. Q. B. 645 [C. A.] 114, 116
Volute, The, [1922] 1 A. C. 129 ; [1922] W. N. 5 ; 91 L. J. P. 38 ; 126 L. T. 425 ; 38 T. L. R. 225 ; 66 Sol. J. 156 179

W.

Waite *v.* North Eastern Rail. Co. (1858), El. B. & E. 719 ; 28 L. J. Q. B. 258 ; 7 W. R. 311 182
Wakeford *v.* Wright (1923), 39 T. L. R. 107 [C. A.] 110
Wakelin *v.* London and South Western Rail. Co. (1886), 12 App. Cas. 41 ; 51 J. P. 404 ; 56 L. J. Q. B. 229 ; 55 L. T. 709 ; 35 W. R. 141 184
Wakley *v.* Cooke (1849), 4 Ex. 511 ; 19 L. J. Ex. 91 ... 102, 105
Walker *v.* Baird, [1892] A. C. 491 ; 61 L. J. P. C. 92 ; 67 L. T. 513 16, 20
——— *v.* Brewster (1867), L. R. 5 Eq. 25 ; 37 L. J. Ch. 33 ; 17 L. T. 135 ; 16 W. R. 59 231
——— *v.* Great Northern Rail. Co. (1891), 28 L. R. Ir. 69 ... 42
——— (Peter) & Son, Limited *v.* Hodgson, [1909] 1 K. B. 239 ; 78 L. J. K. B. 193 ; 99 L. T. 902 ; 53 Sol. J. 81 [C. A.] ... 118
Walley *v.* Holt (1876), 35 L. T. 631 44
Wallis *v.* Hands, [1893] 2 Ch. 75 ; 62 L. J. Ch. 586 ; 68 L. T. 428 ; 41 W. R. 471 ; 3 R. 351 274
Walters *v.* Smith (W. H.) & Son, Limited, [1914] 1 K. B. 595 ; 78 J. P. 118 ; 83 L. J. K. B. 335 ; 110 L. T. 345 ; 30 T. L. R. 158 ; 58 Sol. J. 186 266
Walton *v.* Waterhouse (1672), 2 Wms. Saund. 420 279
Warburton *v.* Great Western Rail. Co. (1866), L. R. 2 Ex. 30 ; 36 L. J. Ex. 9 ; 15 L. T. 361 ; 15 W. R. 108 ; 4 H. & C. 695 ... 207
Ward *v.* Weeks (1830), 4 Moo. & P. 808 ; 7 Bing. 211 ; 9 L. J. (O.S.) C. P. 6 ... ... 108, 115
Ware and De Freville *v.* Motor Trade Association, [1921] 3 K. B. 40 ; 125 L. T. 265 ; 37 T. L. R. 213 ; 65 Sol. J. 239 ; 90 L. J. K. B. 949 43
Warner *v.* Riddiford (1858), 4 C. B. (N.S.) 180 259
Warwick *v.* Foulkes (1844), 12 M. & W. 507 ; 1 D. & L. 638 ; 13 L. J. Ex. 109 ; 8 Jur. 85 82
Warwick Tyre Co., Limited *v.* New Motor and General Rubber Co., Limited, [1910] 1 Ch. 248 ; 79 L. J. Ch. 177 ; 101 L. T. 889 ; 27 R. P. C. 161 154
Wason *v.* Walter (1868), L. R. 4 Q. B. 73 ; 38 L. J. Q. B. 34 ; 19 L. T. 409 ; 17 W. R. 169 ; 8 B. & S. 671 121

PAGE
Waterhouse *v.* Wilson-Barker, *Times Newspaper*, 24 March 1925 49, 50
Watkins *v.* Lee (1839), 5 M. & W. 270 ; 7 Dowl. 498 ; 8 L. J. Ex. 266 ; 3 Jur. 484 137
——— *v.* Naval Colliery Co. (1897), Limited, [1911] 2 K. B. 162 80 L. J. K. B. 746 ; 104 L. T. 439 ; 55 Sol. J. 347 [C. A.] ; reversed, [1912] A. C. 693 ; 81 L. J. K. B. 1056 ; 107 L. T. 321 ; 28 T. L. R. 569 ; 56 Sol. J. 719 205
Watson *v.* Holliday (1882), 20 Ch. D. 780 ; 51 L. J. Ch. 906 ; 46 L. T. 878 ; 30 W. R. 747 ; affirmed, 52 L. J. Ch. 543 ; 48 L. T. 545 ; 31 W. R. 536 69
——— *v.* M'Ewan, [1905] A. C. 480 ; 74 L. J. P. C. 151 ; 93 L. T. 489 121
Watt *v.* Watt, [1905] A. C. 115 ; 69 J. P. 249 ; 74 L. J. K. B. 438 ; 92 L. T. 480 ; 53 W. R. 547 ; 21 T. L. R. 386 76
Wear Commissioners *v.* Adamson (1876), 1 Q. B. D. 546 ; 2 App. Cas. 743 ; 47 L. J. Q. B. 193 ; 37 L. T. 543 ; 26 W. R. 217 [C. A.] ; affirmed (1877), 2 App. Cas. 743 8
Webb *v.* Beavan (1883), 11 Q. B. D. 609 ; 47 J. P. 488 ; 52 L. J. Q. B. 544 ; 49 L. T. 201 ... ... 107, 109
——— *v.* Bird (1863), 13 C. B. (N.S.) 841 ; 31 L. J. C. P. 335 ; 8 Jur. (N.S.) 621 ... ... 247, 248
Weblin *v.* Ballard (1886), 17 Q. B. D. 122 ; 50 J. P. 597 ; 55 L. J. Q. B. 395 ; 54 L. T. 532 ; 34 W. R. 455 211
Weir *v.* Bell (1878), 3 Ex. D. 238 ; 47 L. J. Ex. 704 ; 38 L. T. 929 ; 26 W. R. 746 [C. A.] 158
Weld-Blundell *v.* Stephens, [1920] A. C. 956 ; 89 L. J. K. B. 705 ; 123 L. T. 593 ; 36 T. L. R. 640 ; 64 Sol. J. 529 107
Weldon *v.* Times Book Co., Limited (1912), 28 T. L. R. 143 [C. A.] 114, 116
Wells *v.* Head (1831), 4 C. & P. 568 ; 34 R. R. 819 288
—— *v.* Smith, [1914] 3 K. B. 722 ; 83 L. J. K. B. 1614 ; 30 T. L. R. 623 159
Wenman *v.* Ash (1853), 13 C. B. 836 ; 22 L. J. C. P. 190 ; 1 W. R. 452 ; 1 C. L. R. 592 ; 17 Jur. 579 114
Wennhak *v.* Morgan (1888), 20 Q. B. D. 635 ; 52 J. P. 470 ; 57 L. J. Q. B. 241 ; 59 L. T. 28 ; 36 W. R. 697 114
West Leigh Colliery Co. *v.* Tunnicliffe, [1908] A. C. 27 81
Whalley *v.* Lancashire and Yorkshire Rail. Co. (1884), 13 Q. B. D. 131 ; 48 J. P. 500 ; 53 L. J. Q. B. 285 ; 50 L. T. 272 ; 32 W. R. 711 [C. A.] 193
Wheeler *v.* Whiting (1840), 9 C. & P. 262 ; 62 R. R. 749 261
Whitbourne *v.* Williams, [1901] 2 K. B. 722 ; 70 L. J. K. B. 933 ; 85 L. T. 271 [C. A.] 146
White *v.* France (1877), 2 C. P. D. 308 ; 46 L. J. C. P. 823 ; 25 W. R. 878 ... ...9, 171
——— *v.* London General Omnibus Co., [1914] W. N. 78 ... 239
——— *v.* Mellin, [1895] A. C. 154 ; 59 J. P. 628 ; 64 L. J. Ch. 308 ; 72 L. T. 334 ; 43 W. R. 353 ; 11 R. 141 ... 110, 130
——- *v.* Riley, [1921] 1 Ch. 1 ; 89 L. J. Ch. 628 ; 124 L. T. 168 ; 36 T. L. R. 849 ; 64 Sol. J. 725 [C. A.] ... 11, 150
——— *v.* Spettigue (1845), 14 L. J. Ex. 99 ; 13 M. & W. 603 ; 1 Car. & K. 673 ; 9 Jur. 70 ; 67 R. R. 753 25
——— *v.* Steadman, [1913] 3 K. B. 340 ; 82 L. J. K. B. 846 ; 109 L. T. 249 ; 29 T. L. R. 563 ... ... 36, 176
White (John) & Sons *v.* White (J. & M.), [1906] A. C. 72 ; 75 L. J. P. C. 14 ; 94 L. T. 64 250

PAGE
Whitehead *v.* Parks (1858), 2 H. & N. 870 ; 27 L. J. Ex. 169 ... 252
Whitehouse *v.* Fellowes (1861), 10 C. B. (N.S.) 765 ; 30 L. J. C. P. 305 ; 4 L. T. 177 ; 9 W. R. 557 ... ...96, 97
Whitmores (Edenbridge), Limited *v.* Stanford, [1909] 1 Ch. 427 ; 78 L. J. Ch. 144 ; 99 L. T. 924 ; 25 T. L. R. 169 ; 53 Sol. J. 134 ... ... 194, 250
Whittaker *v.* London County Council, [1915] 2 K. B. 676 ; 79 J. P. 437 ; 84 L. J. K. B. 1446 ; 113 L. T. 544 ; 31 T. L. R. 412 ; 13 L. G. R. 950 27
Whitwham *v.* Westminster Brymbo Coal & Coke Co., [1896] 2 Ch. 538 ; 65 L. J. Ch. 741 ; 74 L. T. 804 ; 44 W. R. 698 [C. A.]... 77
Whyler *v.* Bingham Rural Council, [1901] 1 K. B. 45 ; 64 J. P. 77 ; 70 L. J. K. B. 207 ; 83 L. T. 652 ; 17 T. L. R. 23 [C. A.] 30
Wiffen *v.* Bailey and Romford Urban Council, [1915] 1 K. B. 600 ; 79 J. P. 145 ; 84 L. J. K. B. 688 ; 112 L. T. 274 ; 31 T. L. R. 64 ; 59 Sol. J. 176 ; 13 L. G. R. 121 [C. A.] 132, 138
Wilkins (Frederick) & Brothers, Limited *v.* Weaver, [1915] 2 Ch. 322 ; 84 L. J. Ch. 929 143
Wilkinson *v.* Downton, [1897] 2 Q. B. 57 ; 66 L. J. Q. B. 493 ; 76 L. T. 493 ; 45 W. R. 525 159
——— *v.* Haygarth (1847), 12 Q. B. 837 ; 16 L. J. Q. B. 103 ; 11 Jur. 104 276
Williams *v.* Birmingham Battery and Metal Co., [1899] 2 Q. B. 338 ; 68 L. J. Q. B. 918 ; 81 L. T. 62 ; 47 W. R. 680 [C. A.] 185, 187, 205, 208
——— *v.* Mason (1874), 28 L. T. 232 160
——— *v.* Mersey Docks and Harbour Board, [1905] 1 K. B. 804 ; 60 J. P. 196 ; 74 L. J. K. B. 481 ; 92 L. T. 44 ; 53 W. R. 488 ; 21 T. L. R. 397 ; 3 L. G. R. 529 [C. A.] 71, 98
Williamson *v.* Freer (1874), L. R. 9 C. P. 393 ; 43 L. J. C. P. 161 ; 30 L. T. 332 ; 22 W. R. 878 ... ... 113, 126
Willis *v.* Maclachlan (1876), 1 Ex. D. 376 ; 45 L. J. Q. B. 689 ; 35 L. T. 218 19
Wilson *v.* Finch Hatton (1877), 2 Ex. D. 336 ; 46 L. J. Ex. 489 ; 36 L. T. 473 ; 25 W. R. 537 169
——— *v.* Hodgson's Kingston Brewery Co., Limited, [1915] W. N. 352 ; 80 J. P. 39 ; 85 L. J. K. B. 270 ; 113 L. T. 1112 ; 32 T. L. R. 60 ; 60 Sol. J. 142 ... 66
——— *v.* Newberry (1871), L. R. 7 Q. B. 31 ; 41 L. J. Q. B. 31 ; 25 L. T. 695 ; 20 W. R. 111 194
——— *v.* Tumman (1843), 12 L. J. C. P. 306 ; 6 Man. & Gr. 236 ; 6 Sco. N. R. 894 ; 1 D. & L. 573 ; 64 R. R. 770 ... 53
——— *v.* United Counties Bank, Limited, [1920] A. C. 102 ; 88 L. J. K, B. 1033 ; 122 L. T. 76 68
——— *v.* Waddell (1876), 2 App. Cas. 95 ; 35 L. T. 639 193
Wing *v.* London General Omnibus Co., [1909] 2 K. B. 652 ; 73 J. P. 429 ; 78 L. J. K. B. 1063 ; 101 L. T. 411 ; 25 T. L. R. 729 ; 53 Sol. J. 713 ; 7 L. G. R. 1093 [C. A.] 183, 200
Wingate *v.* Waite (1840), 6 M. & W. 739 ; 9 L. J. Ex. 319 ; 4 Jur. 860 20
Winkfield, The, [1902] P. 42 ; 71 L. J. P. 21 ; 85 L. T. 668 ; 50 W. R. 246 [C. A.] 289, 293
Winsmore *v.* Greenbank (1745), Willes, 577 143
Winterbottom *v.* Derby (Lord) (1867), L. R. 2 Ex. 316 ; 36 L. J. Ex. 194 ; 16 L. T. 771 ; 16 W. R. 15 ... ... 6, 222

PAGE

Winterbottom *v.* Wright (1842), 10 M. & W. 109 ; 11 L. J. Ex. 415 ; 62 R. R. 534 ... ... 36, 164
Wisdom *v.* Brown (1885), 1 T. L. R. 412 117
Wolverhampton New Waterworks Co. *v.* Hawkesford (1859), 6 C. B. (N.S.) 336 ; 28 L. J. C. P. 242 ; 5 Jur (N.S.) 1104 ; 7 W. R. 464 27
Wood *v* Conway Corporation, [1914] 2 Ch. 47 ; 78 J. P. 249 ; 83 L. J. Ch. 498 ; 110 L. T. 917 ; 12 L. G. R. 571 [C. A.] 230, 232
——— *v.* Durham (Earl) (1888), 21 Q. B. D. 501 ; 57 L. J. Q. B. 547 ; 59 L. T. 142 ; 37 W. R. 222 82
——— *v.* Waud (1849), 3 Ex. 748 ; 18 L. J. Ex. 305 ; 13 Jur. 742 : 251
Woodley *v.* Metropolitan District Rail. Co. (1877), 2 Ex. D. 384 ; 46 L. J. Ex. 521 ; 36 L. T. 419 [C. A.] 187
Wootton *v.* Sievier, [1913] 3 K. B. 499 ; 82 L. J. K. B. 1242 ; 109 L. T. 28 ; 29 T. L. R. 596 ; 57 Sol. J. 609 [C. A.] ... 118
Worth *v.* Gilling (1866), L. R. 2 C. P. 1 197
Wright *v.* London and North Western Rail. Co. (1876), 1 Q. B. D. 252 ; 45 L. J. Q. B. 570 ; 33 L. T. 830 [C. A.] ... 209
——— *v.* Williams (1836), 5 L. J. Ex. 107 ; 1 M. & W. 77 ; 1 Tyr. & G. 375 ; 1 Gale, 410 ; 46 R. R. 265 238
Wyatt *v.* White (1860), 29 L. J. Ex. 193 ; 1 L. T. 517 ; 8 W. R. 307 ; 5 H. & N. 371 133
Wyld *v.* Pickford (1841), 10 L. J. Ex. 382 ; 8 M. & W. 443 ; 58 R. R. 775 292

Y.

Yarmouth *v.* France (1887), 19 Q. B. D. 647 ; 57 L. J. Q. B. 7 ; 36 W. R. 281 ... ... 187, 211
Yates *v.* Whyte (1838), 4 Bing. N. C. 272 ; 5 Scott, 640 83

Z.

Zierenberg *v.* Labouchere, [1893] 2 Q. B. 183 ; 57 J. P. 711 ; 63 L. J. Q. B. 89 ; 69 L. T. 172 ; 41 W. R. 675 ; 4 R. 464 [C. A.] 116

THE LAW OF TORTS.

INTRODUCTION.

"THE maxims of law," says Justinian, "are these: To live honestly, to hurt no man, and to give every one his due." The practical object of law must necessarily be to enforce the observance of these maxims, which is done by punishing the dishonest, causing wrongdoers to make reparation, and insuring to every member of the community the full enjoyment of his rights and possessions.

Infractions of law are, for the purposes of justice, divided into two great classes: viz., public and private injuries. The former consist of offences against the community at large, or offences—commonly called crimes—which, although primarily affecting individuals, are subversive of law and order; and as no redress can be given to the community, except by the prevention of such acts for the future, they are either stopped by injunction at the suit of the Attorney-General, or (in the case of crimes) visited with some deterrent and exemplary punishment.

Private or civil injuries, on the other hand, are merely violations or deprivations of the legal rights of individuals. These admit of redress. The law, therefore, affords a remedy by forcing the wrongdoer to make reparation; and in some cases also restrains him by injunction from repeating the wrong.

But as injuries are divided into criminal and civil, so the latter are sub-divided into two classes, of injuries *ex contractu* and injuries *ex delicto*—the former being such as arise out of the violation of duties undertaken by contract, and the latter (commonly called torts) such as spring from the violation of duties imposed by law, to the performance or observance of which every member of the community is entitled as against the world at large.

Although, however, these divisions are broadly correct, the border-line between them is by no means well defined.

Indeed, from the very nature of things, each division must to some extent overlap the others. Thus the same set of circumstances may constitute a crime, a tort, and a breach of contract. At the same time, as those circumstances may be regarded from each of the three points of view, no confusion ensues from the fact that they cannot be exclusively placed in any one of the three classes.

In this Work an attempt has been made to state the principles which the law applies to those facts which constitute torts.

PART I.

RULES RELATING TO TORTS IN GENERAL.

CHAPTER I.

OF THE NATURE OF A TORT.

ART. 1.—*Definition of a Tort.*

A TORT is an act or omission which, independent of contract, is unauthorised by law, and results either—

(a) in the infringement of some absolute right to which another is entitled ; or
(b) in the infringement of some qualified right of another causing damage ; or
(c) in the infringement of some public right resulting in some substantial and particular damage to some person beyond that which is suffered by the public generally.

No one has yet succeeded in formulating a perfectly satisfactory definition of a tort ; indeed, it may be doubted whether a scientific definition, which would at the same time convey any notion to the mind of the student, is possible.

Comment on various definitions of Tort.

A tort is described in the Common Law Procedure Act, 1852, as **"a wrong independent of contract."** If we use the word "wrong" as equivalent to violation of a right recognised and enforced by law by means of an action for damages, the definition is sufficiently accurate, but scarcely very lucid ; for it gives no clue as to what constitutes a wrong or violation of a right recognised and enforced by law.

A tort may be described as a breach of a legal duty arising independently of contract and for which an action

Art. 1.

for damages can be maintained in a court of Common Law, (*a*).

Examination of author's definition.

It will be perceived from the above definition that three distinct factors are necessary to constitute a tort according to our law. First, there must be some act or omission on the part of the person committing the tort (the defendant), not being a breach of some duty undertaken *by contract*. Secondly, the act or omission must not be authorised by law. Thirdly, this wrongful act or omission must, in some way, inflict an injury, special, private, and peculiar to the plaintiff, as distinguished from an injury to the public at large; and this may be either by the violation of some right *in rem*, that is to say, some right to which the plaintiff is entitled as against the world at large, or by the infliction on him of some loss of property, health, or material comfort.

It is desirable at this stage to examine the third of these three factors a little more closely.

One often sees it stated in legal works that a *damnum absque injuriâ* is not actionable, but that an *injuria sine damno* is.

Meaning of "*damnum*" and "*injuria*."

By *damnum* is meant damage in the sense of **substantial** loss of money, comfort, health, or the like. By *injuria* is meant an unauthorised interference, however trivial, with some right conferred by law on the plaintiff (*ex. gr.* the right of excluding others from his house or garden). All that the maxims come to, therefore, is this: that no action lies for mere damage (*damnum*), however substantial, caused **without breach of a legal right**; but that an action does lie for interference with another's absolute legal private right, even where unaccompanied by actual damage, *e.g.* a trespass (*b*).

Read by the light of these observations, both the maxims in question are correct. For the interruption of an absolute right, however temporary and however slight, is considered by the law to be damaging, and a proper subject for reparation; and substantial damages have more than once

(*a*) Salmond, Law of Torts, 6th ed., p. 7.

(*b*) *Entick* v. *Carrington* (1765), 19 St. Tr. 1066; but the damages given for the nominal infringement of a right are not such as to encourage these actions unduly.

Art. 1.

(in cases of false imprisonment) been awarded, where the plaintiff's surroundings were very considerably improved during his unlawful detention. But when no absolute private right has been invaded by a wrongful act, then no action will lie unless the plaintiff has sustained actual loss or damage.

Damnum absque injuriâ.

Damnum absque injuriâ means damage without infringement of any legal right, and it is clear that this is not actionable, even though the damage is caused by an unauthorised act, such as a crime or breach of trust.

For instance, murder is an act unauthorised by law, and it may inflict most cruel and particular damage on the family of the murdered man; but, nevertheless, at common law (*i.e.* apart from statute), that gives them no civil remedy against the murderer (*bb*). So, if one libels a dead man, his children have no private right of action in the civil courts (*c*), although it may cause them to be cut off from all decent society, for, though a man has in a sense a right to his own reputation, he has none in the reputation of his father (*d*). So a breach of trust, usually followed by private and particular loss to the beneficiaries, is not permitted in equity, but nevertheless cannot properly be said to constitute a tort.

Injuria sine damno.

In the case of the invasion of an absolute private right, there is a wrong done to the plaintiff by the mere infringement of that right, and for every wrong there is a remedy by action "*ubi jus ibi remedium*" (*dd*).

A man has an absolute right to his property, to the immunity of his person, and to his liberty. Thus, in actions of trespass whether to goods, lands, or the person (including assault and false imprisonment), actual damage is not an essential part of the cause of action, and a plaintiff is entitled to damages for the mere infringement of these rights.

(*bb*) *The Amerika*, [1917] A. C. 38; *The Molière*, [1925] P. 27.

(*c*) But generally there will be a remedy against the libeller by criminal process, *R.* v. *Ensor* (1887), 3 T. L. R. 366.

(*d*) *Broom* v. *Ritchie* (1904), 6 F. 842, Ct. of Sess.

(*dd*) *Ashby* v. *White* (1703), 1 Sm. L. C. 240.

Art. 1.

Infringement of qualified private rights.

But there are some private rights which are only qualified rights, that is, rights to be saved from loss, and no action will lie for an infringement of these rights without proof of actual damage. Thus, a person has not an absolute right not to be deceived, and in an action for fraud it is necessary for the plaintiff to show that the deceit complained of resulted in damage. So, too, in actions for nuisance (with some exceptions), malicious prosecution and negligence, damage is an essential part of the cause of action; as in all these cases the right infringed is only a qualified right —a right to be preserved *from damage* by certain acts or omissions of other persons.

Infringement of public rights.

Lastly, a tort may consist in the infringement of a public right, *i.e.*, a right which all men enjoy in common, coupled with particular damage. Take, for example, rights of highway. If a highway is obstructed, an injury is done to the public, and for that wrong the remedy is by indictment or by proceedings by the Attorney-General on behalf of the public. If every member of the public could bring an action, the number of possible actions for one breach of duty would be without limit (*e*). But if, in addition to the injury to the public, a special, peculiar and substantial damage is occasioned to an individual, then it is only just that he should have some private redress (*f*).

It will, therefore, be seen that there must be an act or omission either causing (a) an infringement of some absolute private right, or (b) an infringement of a qualified private right *resulting in damage*, or (c) an infringement of a public right resulting in substantial and particular damage to some person beyond that suffered by the public in general.

The act or omission must be unauthorised.

Again, the act or omission must be unauthorised, *i.e.*, not justified by law. If a sheriff enters on a man's land under due process of law to execute a writ of *fi. fa.*, his act, though an infringement of the right of property, is not tortious, because it is authorised by the judgment and writ of execution. So, too, an entry on land may be justified by

(*e*) See *Winterbottom* v. *Lord Derby*, L. R. 2 Ex. 316; *W. H. Chaplin & Co. Limited* v. *Westminster Corporation*, [1901] 2 Ch. 329.

(*f*) See *Lyon* v. *Fishmongers' Co.*, 1 App. Cas. 662; and *Fritz* v. *Hobson*, 14 Ch. D. 542.

necessity, or by its being done lawfully in the exercise of a right of way or by licence of the owner of the land. And trespasses to the person by beating or imprisonment may be justified by a sentence of a court of competent jurisdiction, and an assault may be justified by its being done in self-defence, or as reasonable chastisement by a parent or schoolmaster. In all these cases the acts done are *primâ facie* tortious, but are not actionable because they are authorised by law. Art. 1.

ART. 2.—*Ubi jus ibi remedium.*

A violation of every legal right (not being a breach of contract) committed without lawful justification is a tort.

"Any person who obtains possession, however innocently, of the goods of another who has been fraudulently deprived of them, and disposes of them whether for his own benefit or for that of any other person, is guilty of a conversion" (*g*). "Every invasion of private property, be it ever so minute, is a trespass" (*h*). Explanation.

"If men will multiply injuries actions must be multiplied too, for every man that is injured ought to have his recompense" (*hh*).

An action for tort is the appropriate remedy for every infringement of right which is not a breach of contract: and as rights are infinitely various, so are torts.

The rights, infringements of which, constitute torts, include— Classification of rights.

(1) *Personal rights*, such as the right everyone has to have his person immune from damage. Infringements of this right give rise to actions for trespass to the person (assault and false imprisonment), and when the character or reputation is attacked to actions for libel and slander. An action for negligence also lies for personal injuries caused by the negligence of another.

(*g*) *Hollins* v. *Fowler* (1875), L. R. 7 H. L. 757.
(*h*) *Entick* v. *Carrington*, 19 St. Tr. 1066.
(*hh*) *Ashby* v. *White* (1703), 1 Sm. L. C. 240, *per* HOLT, C.J.

Art. 2.

(2) *Rights of property.*—These include rights in respect of corporeal and of incorporeal property. Infringements of these rights give rise to actions for trespass to land and goods, for nuisance, conversion and detention of goods, infringements of trade mark and patent rights, interference with easements and franchises, trade obstruction, fraud, etc.

ART. 3.—*Of Volition and Intention in relation to the unauthorised Act or Omission. Inevitable Accident.*

(1) The unauthorised act or omission must be attributable to active or passive volition on the part of the party to be charged, otherwise it will not constitute an element of a tort (*i*).

(2) Nevertheless a want of appreciation of its probable consequences affords no excuse; for every person is presumed to intend the probable consequence of his acts.

(3) *Want of knowledge that the unauthorised act or omission is an infringement of right, as a rule affords no excuse.*

The student must carefully distinguish between the voluntary nature of the act or omission and the want of appreciation of its consequences. It would be obviously unjust to charge a man with damage caused by some **inevitable accident** (*ii*), over which, or over the cause of which, he had no control. On the other hand, it would be highly dangerous to admit the doctrine, that a man who does an act, or makes an omission voluntarily, should be excused the consequences by reason of lack of judgment or of ignorance (*iii*). So if a man consumes the goods of another, thinking they are his own, or trespasses on another's land, erroneously believing that there is a right of way, he is liable for the wrongful act he has done, and it is no excuse

(*i*) See *Wear Commissioners* v. *Adamson*, 1 Q. B. D. 546 [C. A.], and *S. C.*, in H. L., 2 App. Cas. 743.

(*ii*) *The Nitro-glycerine Case* (1872), 15 Wall. 524; *Stanley* v. *Powell*, [1891] 1 Q. B. 86.

(*iii*) *In re Polemis* v. *Furness, Withy & Co.*, [1921] 3 K. B. 560 [C. A.].

that he believed he had a right to do the act complained of, though in criminal law good faith is often a defence. Art. 3.

The following illustrations will, however, help to accentuate the difference better than pages of explanation : Illustrations.

(1) A newspaper published a defamatory article of a person described as " Artemus Jones." Neither the author of the article nor the editor knew that there was in existence a person of the name of Artemus Jones, and therefore they could not have intended to defame any particular person. In fact there was a barrister of that name to whom readers of the article might reasonably think the article referred. As the article was in fact defamatory of him, the publishers were liable, the injury to the plaintiff being the natural consequences of their publishing the article (*j*).

So, too, if a person makes a false defamatory statement of another, it is no defence that he believed it to be true (*j*).

(2) A person has an unguarded shaft or pit on his premises. If another, lawfully coming on to the premises on business, falls down the shaft, and is injured, he may bring his action, although there was no intention to cause him or anyone else any hurt. For the neglect to fence the shaft was an unauthorised omission, and the fall of the plaintiff was the probable consequence of it (*k*).

(3) On the other hand, where a horse drawing a brougham under the care of the defendant's coachman in a public street, suddenly and without any explainable cause bolted, and notwithstanding the utmost efforts of the driver to control him, swerved on to the footway and knocked down the plaintiff, it was held that the defendant was not liable, as the accident was not attributable to any wrongful act or omission of the defendant or his servant (*l*).

(*j*) *E. Hulton & Co.* v. *Jones*, [1910] A. C. 20.

(*k*) *Indermaur* v. *Dames*, L. R. 2 C. P. 311, followed in *Mercer* v. *S. E. & C. Ry.*, [1922] 2 K. B. 549 ; *White* v. *France*, 2 C. P. D. 308 ; *Norman* v. *G. W. Rail. Co.*, [1915] 1 K. B. 584 ; *Cox* v. *Coulson*, [1916] 2 K. B. 177 [C. A.], followed in *Sheehan* v. *Dreamland Margate Ltd.* (1923), 40 T. L. R. 155 [C. A.] : *Pritchard* v. *Peto*, [1917] 2 K. B. 173.

(*l*) *Manzoni* v. *Douglas*, 6 Q. B. D. 145 ; *Holmes* v. *Mather* (1875), L. R. 10 Ex. 261.

Art. 3.

Inevitable accident.

(4) So, too, where a man accidentally shot another without intending to do so, and without being guilty of any negligence or want of care in the use of his gun, it was held that no action would lie. He had not been guilty of any imprudent act or omitted any precaution which a reasonable and prudent man would have taken (*m*).

(5) Similarly, the defendant carriers received for carriage a package whose appearance had nothing calculated to arouse suspicion, nor had they any knowledge of its contents. On being handled in the ordinary course of transit it exploded and damaged the plaintiff's house:—*Held*, that the defendants had no knowledge of the contents of the package and had not been guilty of any negligence, and were not liable for the damage caused by the explosion (*mm*).

ART. 4.—*Malice and Moral Guilt.*

Except in the case of an action for malicious prosecution, evil motive is not an essential ingredient in tort, but its presence may defeat a claim of privilege.

An evil motive cannot make wrongful an act that would otherwise not be so (*n*).

A good motive may justify an act that would otherwise be wrongful; *e.g.*, combined action to promote or protect trade interests (*o*).

Malice.

"Malice in common acceptation of the term means ill-will against a person, but in its legal sense it means a **wrongful act done intentionally without just cause or excuse**" (*p*).

(*m*) *Stanley* v. *Powell*, [1891] 1 Q. B. 86.

(*mm*) *The Nitro-glycerine Case* (1872), 15 Wall. 524.

(*n*) *Bradford Corporation* v. *Pickles*, [1895] A. C. 587; *Allen* v. *Flood*, [1898] A. C. 1; *Maxey Drainage Board* v. *G. N. Rail. Co.*, 106 L. T. 429 (1912).

(*o*) *Sorrell* v. *Smith*, [1924] 1 Ch. 506 [C. A.]; *Brimelow* v. *Casson*, [1924] 1 Ch. 302.

(*p*) *Per* BAYLEY, J., in *Bromage* v. *Prosser*, 4 B. & C. 247, at p. 255.

Art. 4.

It is true to say of some acts that they are not tortious unless done maliciously, provided that the term "maliciously" is used in its strict legal sense. But malice in its popular sense has very little to do with the law of torts, and no action can ever be brought for a **lawful act** although done out of malice.

Thus, if A. intentionally and without just cause or excuse induce B. to break his contract of service with C., and damage results to C., A. commits a tort and may be sued by C.; and it is immaterial whether A. is influenced by good or bad motives (*q*). He may honestly think he is acting in the best interests of B. and C. His motive is then good; there is no "malice" in the sense of ill-will; but the act is malicious in the legal sense (*r*).

But if A. by lawful means induces B. not to enter into a contract of service with C., A. commits no wrong, and C. has no cause of action however much damage he may suffer, and although A. may be acting from the most wicked and selfish motives; for A.'s evil motive does not make wrongful his act which, apart from motive, is not a tort (*s*).

So, too, a man has a right to pump underground water from the subsoil under his own land. And this act being itself lawful is not actionable when done spitefully for the purpose of injuring his neighbour (*t*).

Malicious prosecution and libel.

The one kind of action in which evil motive is a necessary ingredient is malicious prosecution, and there is an apparent exception in the case of libel and slander. As to these, see *post*, Arts. 57 and 63.

Negligence.

Even negligence involves no moral guilt. The state of mind of the defendant is immaterial. The only question is, What has he done or left undone? Has he acted as a

(*q*) *Quinn* v. *Leathem*, [1901] A. C. 495; *Long* v. *Smithson* (1918), 118 L. T. 678; *Hodges* v. *Webb*, [1920] 2 Ch. 70.

(*r*) Note the limitation put on this liability by the Trade Disputes Act, 1906, s. 3, and see *Conway* v. *Wade*, [1909] A. C. 506; *Vacher & Sons, Limited* v. *London Society of Compositors*, [1913] A. C. 107; *Larkin* v. *Long*, [1915] A. C. 814.

(*s*) *Allen* v. *Flood*, [1898] A. C. 1; *Stott* v. *Gamble*, [1916] 2 K. B. 504; *Davies* v. *Thomas*, [1920] 2 Ch. 189; *White* v. *Riley*, [1921] 1 Ch. 1.

(*t*) *Bradford Corporation* v. *Pickles*, [1895] A. C. 587.

Art. 4.

reasonable and prudent man would do in the circumstances? Not, Has he done what he thought was the best thing to do? The law pays no regard to the moral culpability of the defendant, but considers only whether his conduct has been reasonable and prudent as judged from the standpoint of the average man.

Fraud.

It is said, indeed, that in order to constitute fraud there must be some moral turpitude; and in a sense this is true. Actionable fraud consists in the making of an untrue representation with the intention of deceiving and with knowledge that it is untrue, or absolutely recklessly without caring whether it is true or untrue. The man who does this is no doubt in most cases morally guilty; but it is conceivable that a man may, from the highest motives and honestly believing that he is doing right, make a statement which he knows to be untrue, intending that that statement should deceive. Nevertheless his conduct, though possibly morally justifiable, is inexcusable in law.

When, therefore, in the law of torts the phrase "malice" is used, it must be understood in its legal sense, *i.e.*, as meaning a wrongful act done intentionally without just cause or excuse. Only in connection with malicious prosecution or to defeat a claim of privilege has it a different meaning, and there, as will be seen hereafter, it does not necessarily mean ill-will against a person.

But an act which is unlawful unless it can be justified may be made lawful if such justification is forthcoming: *e.g.*, where a newspaper combination threatened to cut off supply to a distributor unless he discontinued supply to a particular news-vendor (by proper termination of his agreement to supply such news-vendor), it has been held that although the act of the combination injured the trade of the particular news-vendor and so was *primâ facie* unlawful, yet it was justified by showing the course taken was pursued in promotion or protection of the trade interests of those who combined (*tt*).

(*tt*) *Sorrell* v. *Smith*, [1924] 1 Ch. 506 [C. A.].

ART. 5.—*Of Remoteness or the connection of the Damage with the unauthorised Act or Omission.* Art. 5.

When the cause of action is for actual damage, the unauthorised act or omission must be shown to have been **the effective cause** of the damage, but not necessarily the immediate cause.

Since the decision in *Re Polemis and Furness, Withy & Co.* (*u*), it would appear that wherever the act complained of is shown to be a negligent act the defendant is liable for all consequences which directly flow from it, and the question of his having foreseen such consequences is not relevant.

"The plaintiff must always show in a case in which he complains of damage resulting from negligence that the negligence was the direct cause of the damage. In some cases a considerable interval may elapse between the time when the negligence is said to have occurred and the time when the damage is said to have resulted" (*v*). In such cases the onus lies on the plaintiff to show that the chain of causation connecting the negligence with the damage is complete. Explanation.

(1) The defendant wrongfully left a house-van and steam plough for the night on the grassy side of a highway. During the evening a mare which was being driven on the highway in a cart was frightened by the house-van and plough. The mare was a kicker, but the driver did not know she was. She shied, kicked, galloped away kicking, got her leg over the shaft and fell, and kicked the driver as he fell out of the cart. The driver was killed, and it was held that his death flowed directly from the unauthorised act of the defendant (*w*). Illustrations.

(*u*) [1921] 3 K. B. 560.
(*v*) *The Paludina*, [1925] P. 40 [C. A.], *per* BANKES, L.J.
(*w*) *Harris* v. *Mobbs*, 3 Ex. D. 268.

Art. 5.

(2) Where through negligence contractors' employees broke a skylight in a shop, causing glass to fall on customers, a wife, apprehending danger to her husband, clutched his arm and tried to pull him out of danger, and in doing so caused injury to her leg:—*Held*, that the wife could recover damages, as her act was not negligent and was a proper consequence of the negligence of the contractors' servants (*x*).

(3) Where a ship, damaged by a collision with another ship owing to the negligence of those in charge of the latter vessel, put into dock for repairs, and while she was there a strike occurred, thus extending the period for which she was unable to go to sea:—*Held*, the defendants were liable for the full loss of time, as the full delay flowed directly from their negligent navigation (*y*).

(4) Plaintiff sued for loss of services by the death of his wife from shock. His wife had escorted her three children up to a point short of a bend in a street, and just after leaving them saw a lorry rushing round the bend towards her, causing her apprehension for her children's safety, causing shock from which she died:—*Held*, such shock was due to the negligence of the lorry driver, and that plaintiff could recover. The defence, on the facts, that the shock was due, not to the reckless driving, but to what bystanders told the wife, was not accepted (*z*).

Explanation.

The above illustrations show the application of the rule that where the negligent act is proved the defendant is liable for all consequences directly flowing from that act, whether he could reasonably have foreseen such consequences or not.

Novus actus interveniens.

Sometimes there intervenes between the wrongful act or omission and the damage, some act or omission of a third person. In these cases the rule is the same, though its application may be more difficult. It may be thus expressed:

Intervening act of third person.

Where an act of a third person intervenes between the wrongful act or omission and the damage, the wrongful act or omission is the effective cause if what the third person does is what such a person would naturally be expected to

(*x*) *Brandon* v. *Osborne, Jarrett & Co.*, [1924] 1 K. B. 554.
(*y*) *H.M.S. London*, [1914], P. 72.
(*z*) *Hambrook* v. *Stokes*, [1925] 1 K. B. 141 [C. A.].

do in the circumstances (*a*). If such third person's act is not such as would be expected in the circumstances, then the consequences of his act are deemed to flow from that act and not from the preceding act or omission.

The preceding illustrations (2), (3), and (4) are also examples of this rule.

Illustrations

(1) In one case a cart was left unattended on a highway, and a child seven years old got upon the cart in play, another child led on the horse and the first child was thereby thrown out and hurt. The owner of the cart was held liable, as it was a natural thing for children in such circumstances to play with an unattended cart (*b*).

(2) And where a driver of a van left it in charge of a tail-boy who drove on and came into collision with the plaintiff's carriage, it was held that the driver's leaving the cart in charge of a boy was the effective cause of the damage; what else could be expected of a boy than that he should try to drive the van? (*c*).

The Squib Case.

(3) The defendant threw a squib on to a stall at a fair, the keeper of which, in self-defence, threw it off again; it then alighted on another stall, was again thrown away, and finally exploding, blinded the plaintiff. DE GREY, C.J., said: "It has been urged that the intervention of a free agent will make a difference: but I do not consider Willis and Ryal (the persons who merely threw away the squib from their respective stalls) as free agents in the present case, but acting under a compulsive necessity for their own safety and self-preservation." The defendant was held liable (*d*).

ART. 6.—*The Act or Omission must be unauthorised.*

(1) An act or omission which is *primâ facie* tortious is not actionable if it is done under some lawful excuse.

(*a*) *Engelhart* v. *Farrant & Co.*, [1897] 1 Q. B. 240 [C. A.]; *Rickards* v. *Lothian*, [1913] A. C. 263; *Ruoff* v. *Long & Co.*, [1916] 1 K. B. 155; *Martin* v. *Stanborough* (1924), 4 T. L. R. 557 [C. A.].

(*b*) *Lynch* v. *Nurdin*, 1 Q. B. 29.

(*c*) *Engelhart* v. *Farrant & Co.*, *supra*; and see *Harnett* v. *Bond*, [1924] 2 K. B. 517 [C. A.], affirmed House of Lords (1925).

(*d*) *Scott* v. *Shepherd*, 2 W. Bl. 892 [Ex. Ch.].

Art. 6. (2) Among lawful excuses are that the act or omission is:

(i) An Act of State;
(ii) A judicial act;
(iii) An executive act;
(iv) An act or omission authorised by statute;
(v) An act or omission done by leave and licence.

Explanation. Besides these excuses there are others of a more special character, which are dealt with in connection with those torts in relation to which they generally arise.

The general excuses above enumerated are shortly explained in the following Articles. Some of them are more fully explained in later portions of this work.

ART. 7.—"*Act of State.*"

An "Act of State" is an act injurious to the person or to the property of some person *who is not at the time of that act a subject of His Majesty*; which act is done by any representative of His Majesty's authority civil or military, and is either previously sanctioned or subsequently ratified by His Majesty. As between the Sovereign and his subjects there can be no such thing as an "Act of State" (*e*).

No action can be brought for damage resulting from an Act of State, whether the transaction constituting an Act of State be between two independent states or between a state and an individual foreigner (*f*).

Explanation. But where the plaintiff although a foreigner is resident in the King's Dominions it is no defence to plead "Act of State" (*g*).

(*e*) Stephen's History of the Criminal Law, Vol. II., pp. 61 and 65; *Walker* v. *Baird*, [1892] A. C. 491.

(*f*) Halsbury's Laws of England, Vol. 1., pp. 14, 15.

(*g*) *Johnstone* v. *Pedlar*, [1921] 2 A. C. 262.

Art. 7.

Illustrations.

(1) A British naval officer destroyed a Spaniard's barracoons for slaves on the African coast. His conduct was formally approved by a Secretary of State:—*Held*, that this was an "Act of State" and that no action lay in respect of it (*h*).

(2) The British Minister in Sweden assured a Swedish Company that if one of its ships was sent to England with a certain cargo it would not be detained. Nevertheless the British Government detained it. On a Petition of Right it was held the suppliant had no remedy. These facts constitute an Act of State (*i*).

Art. 8.—*General Immunity of Judicial Officers.*

(1) No action lies against a judge of a *superior* court in respect of any act done by him in his judicial capacity, even though he act oppressively, maliciously, and corruptly (*k*).

(2) No action lies against a judge of an *inferior* court in respect of any act done by him *within his jurisdiction* (*l*).

(3) A judge of an inferior court is liable for anything he does in his judicial capacity **but without his jurisdiction if he knew or had the means of knowing** facts which would show that he had not jurisdiction (*m*).

(4) No action lies against certain judicial officers in respect of acts done within the scope of their official capacity, *e.g.*, an Official

(*h*) *Buron* v. *Denman* (1859), 2 Ex. 167; this is the leading case on "Acts of State."

(*i*) *Rederiaktiebolaget Amphitrite* v. *The King*, [1921] 3 K. B. 500.

(*k*) *Scott* v. *Stansfield*, L. R. 3 Ex. 220; *Anderson* v. *Gorrie*, [1895] 1 Q. B. 668 [C. A.].

(*l*) *Doswell* v. *Impey*, 1 B. & C. 163, 169; *Houlden* v. *Smith*, 14 Q. B. 841; *Law* v. *Llewellyn*, [1906] 1 K. B. 487.

(*m*) *Calder* v. *Halket*, 3 Moo. P. C. 28.

Art. 8. Receiver (*n*), Military Courts (*nn*), Consular Courts (*nnn*), Arbitrators (*o*).

NOTE.—The Supreme Court of Judicature (including the Court of Appeal and all the divisions of the High Court of Justice) is a superior court, as also are Assize Courts.

Inferior courts include county courts, the Mayor's and City of London Court, quarter sessions, and petty sessions.

It will be observed that the protection given to judges covers not merely what they do **lawfully**, as when they sentence convicted criminals to imprisonment, but also in many cases what they do **unlawfully**, as if a judge sentences an innocent person to imprisonment.

If it were not for the rule now under consideration a judge would be liable to an action for assault or false imprisonment if he ordered the arrest of or sentenced to imprisonment an innocent person. So, too, judges cannot be sued for slander in respect of defamatory words uttered by them in their judicial capacity. The following illustrations are cases of assault or false imprisonment. Illustrations of the immunity of judges from actions for libel and slander will be found in Art. 56.

Illustrations. (1) Where the judge of the Supreme Court of Trinidad and Tobago caused the plaintiff to be imprisoned in default of finding bail, and the jury found that he had overstrained his judicial powers, and had acted in the administration of justice oppressively and maliciously, and to the prejudice of the plaintiff and the perversion of justice, the Court of Appeal held that, nevertheless, no action lay (*oo*).

(2) Similarly, if a judge of a superior court acting in his judicial capacity sentences or orders a person to be imprisoned, no action for assault or false imprisonment lies, however erroneous and corrupt the sentence or order may have been.

(3) It will be noticed that though a judge of a superior

(*n*) *Bottomley* v. *Brougham*, [1908] 1 K. B. 584.
(*nn*) *Dawkins* v. *Rokeby* (1875), L. R. 7 H. L. 744.
(*nnn*) *Haggard* v. *Pelissier Frères*, [1892] A. C. 61.
(*o*) *Pappa* v. *Rose*, L. R. 7 C. P. 525; *Chambers* v. *Goldthorpe*, [1901] 1 Q. B. 624.
(*oo*) *Anderson* v. *Gorrie*, [1895] 1 Q. B. 668 [C. A.].

court is protected, provided the judge is acting in his judicial capacity, in the case of a judge of an inferior court (*p*) the protection only extends to acts done by him **within his jurisdiction.** But if he exceeds his jurisdiction, as by sentencing a prisoner for an offence over which he has no jurisdiction, or in a place where he has no jurisdiction, although he acts in his judicial capacity, he is not protected, and may be sued for trespass.

The protection of the rule, however, extends to all cases in which **upon the facts before him** he would have jurisdiction. If on the facts as they are brought before him a judicial officer has jurisdiction, he is excused, even though when all the facts are known it is seen that he has none. But if he has before him facts from which he **knew or ought to have known** that he had no jurisdiction, he is not protected. If he assumes jurisdiction when in fact he has none by shutting his eyes to the facts, or by reason of his ignorance of the law, he is liable for any tort he commits in excess of his jurisdiction (*q*).

(4) So where a police magistrate fined a person for not causing his child to be vaccinated, and issued a distress warrant in default of payment, he was held liable as the summons itself showed he had no jurisdiction, the prosecution being more than six months after the offence (*r*).

Art. 9.—*General Immunity of Various Executive Officers.*

(1) An executive officer, such as a sheriff or gaoler or constable, acting on a warrant valid on the face of it and issued by a person **who has jurisdiction,** is absolutely protected for anything he does in pursuance of the warrant (*s*).

(*p*) It is not quite clear that the full measure of protection extends to inferior courts not of record (such as justices of the peace), but see the Justices Protection Act, 1848 (11 & 12 Vict. c. 44), s. 1, and *Pease* v. *Chaytor*, 3 B. & S. 620.

(*q*) *Houlden* v. *Smith*, 14 Q. B. 841; *Willis* v. *Maclachlan*, 1 Ex. D. 376. See *Haggard* v. *Pelicier Frères*, [1892] A. C. 61 [P. C.]; *Quinn* v. *Pratt*, [1908] 2 Ir. R. 69.

(*r*) *Polley* v. *Fordham*, 91 L. T. 525. The case is reported on another point, [1904] 2 K. B. 345. See *post*.

(*s*) *Henderson* v. *Preston*, 21 Q. B. D. 362 [C. A.]; *Olliet* v. *Bessey*, T. Jones Rep. 214.

Art. 9.

(2) But a warrant or order of a court which has **no jurisdiction** in the matter, is no protection (*t*) except in the case of constables, who are protected by statute for arresting under a warrant of a justice, notwithstanding any defect of jurisdiction (*u*).

(3) The Home Secretary in refusing to give the fiat necessary to a Petition of Right is immune from liability (*uu*).

Illustrations.

Thus, when a governor of a prison, in obedience to a warrant of commitment which directed that the plaintiff should be imprisoned in a certain gaol for seven days, detained the prisoner from August 25th (the day following that of his arrest) until August 31st, it was held that, as he had acted in obedience to a warrant issued by a court which had jurisdiction, no action for false imprisonment lay against him, whether the sentence properly ran from the day of the arrest (August 24th) or from the day when he was lodged in prison (August 25th) (*v*).

So, too, a sheriff is absolutely protected if under a writ of *fi. fa.* he seizes the goods of the judgment debtor. But the writ is no protection to him if he seizes the goods of some other person, for the writ does not authorise him to do that.

But an order from the Sovereign or from any superior authority is no defence when a servant of the Crown is sued in tort (*vv*).

ART. 10.—*Authorisation by Statute.*

(1) If the legislature directs or authorises the doing of a particular thing, the doing of it cannot be wrongful and no action will lie for any damage resulting from doing it, if it be done *without negligence.*

(*t*) *Clark* v. *Woods*, 2 Ex. 395; *Wingate* v. *Waite*, 6 M. & W. 739.
(*u*) See Art. 119.
(*uu*) *Irwin* v. *Grey* (1862), 3 F. & F. 365.
(*v*) *Henderson* v. *Preston*, 21 Q. B. D. 362.
(*vv*) *Walker* v. *Baird*, [1892] A. C. 491.

Art. 10.

(2) An action does lie for doing that which the legislature has authorised, *if it be done negligently* (*w*).

(3) If the legislature merely permits a thing to be done if it can be done without causing injury, an action lies if it is done in such a manner as to cause injury (*x*).

Explanation.

When the legislature expressly empowers a railway company to make a railway on a particular site and to run trains upon it, no action lies against the company for any nuisance caused by reason of the making of the railway on that site and the running of trains without negligence. Acts of Parliament giving such powers usually contain provisions for compensating persons who suffer by reason of their lands being taken or injuriously affected by the exercise of the statutory powers, but *no action lies*, for what the legislature has expressly authorised cannot be wrongful.

There is, however, an implied obligation not to be negligent in carrying out statutory powers and duties, and for breach of this obligation an action lies.

By many Acts of Parliament local authorities and other bodies are given general powers to execute works, such as making sewerage works for their district, erecting hospitals for infectious diseases, and the like. These things may obviously be nuisances if done or made in unsuitable places, but are not necessarily nuisances. Whether an Act is merely permissive, or is one which expressly authorises the doing of a thing, whether it be a nuisance or not, is a question of construction : but generally when the thing to be done **must necessarily** cause injury to someone, the Act will be construed as authorising the doing of it in any case : if the thing to be done **will not necessarily** cause injury, but

(*w*) *Per* Lord BLACKBURN : *Geddis* v. *Proprietors of Bann Reservoir*, 3 App. Cas. 430, 455 ; *Hammersmith Rail. Co.* v. *Brand*, L. R. 4 H. L. 171 ; for a recent example of misfeasance see *Carpenter* v. *Finsbury Borough Council*, [1920] 2 K. B. 195.

(*x*) *Metropolitan Asylum District* v. *Hill*, 6 App. Cas. 193 ; *Charing Cross, etc. Electricity Supply Co.* v. *London Hydraulic Power Co.*, [1914] 3 K. B. 772 ; *Great Central Railway* v. *Hewlett*, [1916] 2 A. C. 511 ; *Morrison* v. *Sheffield Corpn.*, [1917] 2 K. B. 866 [C. A.].

Art. 10.

will only do so if done in certain places or a certain way, the Act will be construed as permissive only. "It cannot now be doubted," says Lord HALSBURY (*y*), "that a railway company constituted for the purpose of carrying passengers, or goods, or cattle, are protected in the use of the functions with which Parliament has entrusted them, if the use they make of those functions necessarily involve the creation of what would otherwise be a nuisance at common law."

Illustrations.

(1) The running of the trains upon a railway constructed under statutory powers caused noise, vibration, and smoke, which depreciated the value of the plaintiff's property. It was held that as the Act had authorised the running of the trains, and as the damage complained of was a necessary result, no action would lie at common law (*z*).

(2) The Metropolitan Asylum District Board were authorised to purchase lands and erect buildings to be used as hospitals. But the Act did not imperatively order these things to be done. The Board erected a small-pox hospital, which was, in point of fact, a nuisance to owners of neighbouring lands. On these facts it was held that the Board could not set up the statute as a defence (*a*). The Act was construed as meaning that a small-pox hospital might be built and maintained **if it could be done without creating a nuisance,** whereas the Railway Acts are construed to authorise the construction of the railway, whether a nuisance is created or not.

Railway fires.

(3) A railway company authorised by statute to use locomotives on their line, set fire to the plaintiff's plantation by sparks emitted from a locomotive. They had used every precaution at that time known to prevent sparks, and had been guilty of no negligence, so they were protected by their statutory authority from liability (*b*). If they had not

(*y*) *London, Brighton & South Coast Rail. Co.* v. *Truman*, 11 App. Cas. 45, at p. 50.

(*z*) *Hammersmith, etc. Rail. Co.* v. *Brand*, L. R. 4 H. L. 171.

(*a*) *Metropolitan Asylum District* v. *Hill*, 6 App. Cas. 193. As to the evidence necessary to sustain a *quia timet* action for an injunction to prohibit a proposed small-pox hospital, see *Att.-Gen.* v. *Manchester Corporation*, [1893] 2 Ch. 87.

(*b*) *Vaughan* v. *Taff Vale Rail. Co.*, 5 H. & N. 679.

had express powers to run locomotives they would have been liable at common law, even though there was no negligence in the use of the locomotive (*c*). But in a later case where sparks set fire to dry clippings *negligently* left by the railway company on an embankment, and the fire spread thence on to the plaintiff's land and set fire to his house, it was held that the company were liable, by reason of negligence (*d*).

ART. 11.—*Volenti non fit injuria.*

A person who consents to damage being done cannot bring an action in respect thereof.

(1) The application of this rule to cases where there is express consent is simple. A man who gives another permission to trespass on his land, or to touch his person, cannot afterwards bring an action for such trespass (*dd*). Thus "leave and licence" is always a good defence to any action for tort. But of course anything done in excess of the leave and licence may be the subject of an action; as, for instance, if I give a man permission to walk on my land, doing no damage, and he does damage.

Incurring risk.

(2) The rule, however, is more difficult to apply in cases where the person damaged has not definitely consented to the particular act or omission causing the damage, but has voluntarily accepted the risk of damage being done by some act or omission of another. It has been held that if a person trespasses on land in defiance of a warning that there is danger in so doing (in the particular case the danger was from spring guns), he cannot bring an action for damage resulting from that danger (*e*). And the rule has even been extended to apply to cases where a person has accepted the risk of dangers accompanying his employment—such as those arising from the dangerous condition

(*c*) *Jones* v. *Festiniog Rail. Co.*, L. R. 3 Q. B. 733.

(*d*) *Smith* v. *London and South Western Rail. Co.*, L. R. 6 C. P. 14, and see the Railway Fires Act, 1905, *post*, Article 90.

(*dd*) *Latter* v. *Braddell* (1881), 44 L. T. 369 [C. A.].

(*e*) *Ilott* v. *Wilkes*, 3 B. & A. 304. See also *Lygo* v. *Newbold*, 9 Ex. 302.

Art. 11. of the place where he works (*f*). This application of the rule will be better appreciated later, and is fully dealt with in connection with the law of negligence (*g*).

(3) And a person is not disentitled to recover merely because he *knows* of the existence of danger and takes the risk of incurring it. For the maxim is "volenti," not "scienti," and this means that acceptance of conditions of danger with full appreciation does not necessarily mean *voluntary* acceptance of the risk, as such acceptance may be due to compliance with orders or the coercion of the need of earning a living.

ART. 12.—*To what Extent the Civil Remedy is interfered with where the unauthorised Act or Omission constitutes a Felony.*

(1) Where any unauthorised act or omission is, or gives rise to consequences which make it, a **felony**, and it also violates a private right, or causes private and peculiar damage to an individual, the latter has a good cause of action.

(2) But the policy of the law will not allow the *person injured* to pursue civil redress, if he has failed in his duty of bringing, or endeavouring to bring, the felon to justice, and his action will be stayed until the necessary steps have been taken (*i*).

(3) Where the offender has been brought to justice at the instance of some third person injured by a similar offence, or where prosecution is impossible by reason of the death of the offender, or a reasonable excuse is shown for his not having been prosecuted, the action will not be stayed (*j*).

(*f*) *Thomas* v. *Quartermaine*, 18 Q. B. D. 685.
(*g*) See *post*, Art. 87.
(*i*) *Smith* v. *Selwyn*, [1914] 3 K. B. 98.
(*j*) *Smith* v. *Selwyn*, *supra*; *Carlisle* v. *Orr*, [1918] 2 I. R.

Art. 12.

Explanation.

The rule does **not** apply—

1. To misdemeanors.

2. Where there is no duty on the part of the plaintiff to prosecute, as where *he* is *not* the person injured by the felony (*k*).

3. Where the felony was not committed by the defendant, but by some third person (*l*).

4. If there has been an actual felony the plaintiff cannot avoid stay of his action by amending his pleadings and charging only a misdemeanor (*ll*).

Death caused by felony.

It is expressly provided by Lord Campbell's Act (see *post*, Article 33), that actions for damages brought in respect of the death of any person under that Act shall be maintainable "although the death shall have been caused under such circumstances as amount in law to felony."

Illustrations.

(1) Where, in an action for seduction of the plaintiff's daughter, a paragraph of the claim alleged that the defendant administered noxious drugs to the daughter for the purpose of procuring abortion; it was held that the paragraph could not be struck out as disclosing a felony for which the defendant ought to have been prosecuted, inasmuch as the plaintiff was not the person upon whom the felonious act was committed, and had no duty to prosecute (*m*).

(2) So, where A. has stolen goods, and B. has innocently bought them from A., the owner may bring an action of trover against B., although no steps have been taken to bring A. to justice, for B. is not guilty of felony (*n*).

(3) Also where a husband and wife sued the defendant for damages for rape on the wife, the defendant successfully applied to have the action stayed on the ground that he had not been prosecuted for the felony charged. The claim of the husband was held to be too closely bound up with that of the wife to enable him to proceed on the ground that he was not the party against whom the felony was committed (*nn*).

(*k*) *Appleby* v. *Franklin*, 17 Q. B. D. 93.

(*l*) *White* v. *Spettigue*, 13 M. & W. 603.

(*ll*) *The Amerika*, [1917] A. C. 38, at p. 50. *Per* Lord PARKER.

(*m*) *Appleby* v. *Franklin*, 17 Q. B. D. 93; and see also *Osborn* v. *Gillett*, L. R. 8 Ex. 88.

(*n*) *White* v. *Spettigue*, 13 M. & W. 603.

(*nn*) *Smith* v. *Selwyn*, *supra*.

CHAPTER II.

BREACH OF STATUTORY DUTIES.

ART. 13.—*Breach of Duty created for Benefit of Individuals.*

(1) When a statute creates a new duty **for the benefit of an individual or a class** (*a*), and does not provide any special remedy, an action for damages lies for breach of the duty (*aa*).

(2) If the statute provides a special remedy, the party injured cannot bring an action for damages (*b*), but he **may have an injunction** unless the statute expressly excludes that remedy (*c*).

In every case, however, it is a question of construction of the statute by which the duty is created. A statute *may* give a remedy by action for breach of a public duty, or may create a private duty and yet say that there shall be no remedy for its breach.

Illustrations.

(1) Under the British Columbia Crown Procedure Act, it is the duty of the provincial secretary to submit to the lieutenant-governor a Petition of Right left with him for that purpose. His definite refusal to do so gave the petitioner a cause of action for damages (*d*).

(*a*) *Fowler* v. *Kible*, [1922] 1 Ch. at p. 493 [C. A.].

(*aa*) *Per* WILLES, J., in *Wolverhampton New Waterworks Co.* v. *Hawkesford*, 28 L. J. C. P. 242; applied in *Whittaker* v. *L. C. C.*, [1915] 2 K. B. 676.

(*b*) *Ibid.*

(*c*) *Stevens* v. *Chown*, *Stevens* v. *Clark*, [1901] 1 Ch. 894, approved in *Fraser* v. *Fear* (1912), 107 L. T. 423 [C. A.].

(*d*) *Fulton* v. *Norton*, [1908] A. C. 451 [P. C.]. Note no such cause of action exists under English Law; see Art. 9 (3), *Irwin* v. *Grey*, *supra*.

Art. 13.

(2) If an employer is guilty of a breach of a provision in the Factory Acts, by which he is required to fence dangerous machinery, a workman who is injured in consequence thereof has a cause of action against the employer for such breach (*e*).

ART. 14.—*Breach of Duty created for Benefit of Public.*

(1) When a statute creates a duty **for the benefit of the public,** the possibility or otherwise of a private right of action for the breach of such duty must depend on the scope and language of the statute taken as a whole (*f*), and the provision of a specific remedy for the breach of duties created by the Act is generally held to exclude other remedies (*g*), and the injury in respect of which action is brought must be of the same kind as that which the statute was intended to prevent (*h*).

Comment.

Under many Acts of Parliament local authorities and other public bodies have imposed on them duties for the benefit of the public generally, and a breach of the duty, though it may affect an individual specially, is liable to affect the public at large, or all the persons in a district. Such duties are those imposed on sanitary authorities to provide proper systems of sewers, and on gas and water companies to provide gas and water sufficient in quantity and quality. If an individual suffers by breach of these duties, he cannot generally take proceedings in tort, but must proceed by mandamus, indictment, or other remedies of a penal nature. No right of action arises by implication to any person who suffers no more injury from

(*e*) *Groves* v. *Lord Wimborne*, [1898] 2 Q. B. 402 [C. A.], approved in *Fowler* v. *Kible*, *supra*.

(*f*) *Dawson* v. *Bingley U. D. C.*, [1911] 2 K. B. 149.

(*g*) *Atkinson* v. *Newcastle Waterworks Co.* (1877), 2 Ex. D. 441 [C. A.]; *Pasmore* v. *Oswaldtwistle Urban Council*, [1898] A. C. 387; *Heath's Garage, Limited* v. *Hodges*, [1916] 2 K. B. 370.

(*h*) *Gorris* v. *Scott* (1874), L. R. 9 Ex. 125.

breach of such public duty than the rest of the public. But where an individual suffers specially from a breach of a duty created by statute in favour of the public generally, it is a question of construction of the statute whether a remedy for individual injury lies within the scope of the statute. Art. 14.

A sanitary authority in London failed to perform the duty imposed upon them by s. 29 of the Public Health (London) Act, 1891, of removing street refuse (including snow) from the streets. The plaintiff suffered injuries by a fall caused by snow which the sanitary authority had neglected to remove. It was held that he had no cause of action (*i*). Illustration.

Art. 15.—*Highway Authorities not Liable for Nonfeasance.*

A highway authority is not liable for damages resulting from mere nonfeasance, *i.e.*, for mere neglect to perform its statutory duty of repairing the highway: but is liable for damage resulting from misfeasance, *i.e.*, for doing something which creates a nuisance in the highway (*k*).

Before the present highway authorities were created by Act of Parliament, the rule was established that a surveyor of highways was not liable for not repairing a highway, the proper remedy being indictment of the inhabitants (*l*). And many recent cases have shown that the same rule is applied to the statutory bodies to whom the duty of repairing highways has been transferred by statute, unless there is anything in the statute to show an Explanation.

(*i*) *Saunders* v. *Holborn District Board of Works*, [1895] Q. B. 64; *Phillips* v. *Britannia Hygienic Laundry Co., Ltd.*, [1923] 2 K. B. 832 [C. A.].

(*k*) *Cowley* v. *Newmarket Local Board*, [1892] A. C. 345; *Papworth* v. *Battersea Council*, [1914] 2 K. B. 89.

(*l*) *Russell* v. *Men of Devon*, 2 T. R. 667.

Art. 15.

intention to make them liable for nonfeasance (*m*). The rule applies also to bridges which are highways (*n*).

Misfeasance.

When a highway authority creates an artificial work in a highway, they will be liable if that work is a nuisance and causes damage to an individual, for the creation of a nuisance is misfeasance. And they may also be liable if by their negligence they allow it to get out of repair so as to become a nuisance, for that is not mere non-repair of the highway. They caused a nuisance actively **by putting the thing there,** if the thing gets out of repair so as to be a nuisance (*o*).

Highway and sanitary authority.

Sometimes the same local body is both highway authority and sanitary authority, and in their capacity of sanitary authority they may put in the highway a manhole or grating for sewers. If this thing gets out of repair by reason of their *negligence* (but not otherwise), they are liable (*p*). But if it becomes a nuisance by reason of the surface of the roadway getting worn down round it, whilst the thing itself is not out of repair, they are not liable. Not as highway authority, for their only breach of duty is not repairing ; and not as sanitary authority, for the thing they have put there is not out of repair, and they have been guilty of no negligence (*q*).

Illustrations.

(1) A highway authority removed a fence which their predecessors had erected to protect the public from a dangerous ditch. A man driving along the road drove into the ditch, and was drowned. Removing the fence was misfeasance, and the highway authority was liable (*r*).

(*m*) *Municipality of Pictou* v. *Geldert*, [1893] A. C. 524 [P. C.] ; *Gibraltar Sanitary Commissioners* v. *Orfila*, 15 App. Cas. 400 [P. C.] ; *Sydney Municipal Council* v. *Bourke*, [1895] A. C. 433.

(*n*) *Russell* v. *Men of Devon*, *ante* ; *M'Kinnon* v. *Penson*, 8 Ex. 319 ; *Davis* v. *Bromley Corporation*, [1908] 1 K. B. 170.

(*o*) *Borough of Bathurst* v. *Macpherson*, 4 App. Cas. 256 [P. C.] ; *Lambert* v. *Lowestoft Corporation*, [1901] 1 K. B. 590.

(*p*) See *ante*, Art. 11.

(*q*) *Thompson* v. *Brighton Corporation*, *Oliver* v. *Horsham Local Board*, [1894] 1 Q. B. 332.

(*r*) *Whyler* v. *Bingham Rural District Council*, [1901] 1 Q. B. 45.

Art. 15.

(2) An urban authority lawfully made a manhole in the street. The cover was properly made and in good order, but the surface of the road was allowed to wear down so that the cover projected above the surface. The plaintiff's horse stumbled over this, and was injured. The only breach of duty was not repairing the surface of the road, and this was nonfeasance, for which the council was not liable (*s*).

(3) By the negligence of a person employed by the defendants, the highway authority of Canterbury, a heap of stones was left by the side of a road without a light. The plaintiff, driving by in the dark, was upset by it and injured. The negligence consisted in putting the heap of stones by the roadside, and this was misfeasance for which the defendants were liable (*t*).

(4) A local authority was under a statutory obligation to light the streets in its area. The nearest light to a dangerous arch was 70 feet away. A driver of a cart was killed in attempting to pass under the arch. The court held the place was inadequately lighted and the authority liable in damages to the widow on the ground that it had done negligently an act it was authorised by statute to do (*u*).

(*s*) *Thompson* v. *Brighton Corporation, supra.*

(*t*) *Foreman* v. *Canterbury Corporation,* L. R. 6 Q. B. 214; *Parkinson* v. *West Riding of Yorkshire County Council* (1922), 66 Sol. Journal 488.

(*u*) *Carpenter* v. *Finsbury Borough Council,* [1920] 2 K. B. at p. 199, following *Geddis* v. *Bann Reservoir Proprietors* (1878), App. Cas. 430.

CHAPTER III.

RELATION OF CONTRACT AND TORT.

ART. 16.—*Distinction between Actions for Tort and for Breach of Contract.*

(1) If the cause of complaint is for breach of a contractual duty (that is to say, is for an act or omission which would not give rise to any cause of action without proof of a contract), the action is one of contract.

(2) But if the relation of the plaintiff and the defendant be such that a duty arises from the relationship, irrespective of contract, for a breach of that duty the remedy is an action of tort (*a*).

Comment.

Formerly a plaintiff had to be careful to frame his action either in tort or in contract, and the rule then was that if the act or omission complained of was both a breach of duty arising apart from contract, and a breach of contract, the plaintiff might sue in contract or tort (*b*). Each party states the facts on which he relies, and if on those facts the plaintiff could have recovered in any form of action prior to 1875, he can now recover in the action which he has brought. The distinction between tort and contract is chiefly of importance upon the question of the amount of costs recoverable (*c*). The rule is that where the wrong is

(*a*) See *Kelly* v. *Metropolitan Rail. Co.*, [1895] 1 Q. B. 944 [C. A.], *per* A. L. SMITH, L.J., at p. 947; *Turner* v. *Stallibrass*, [1898] 1 Q. B., at p. 58.

(*b*) *Brown* v. *Boorman*, 11 Cl. & F. 1.

(*c*) See County Courts Act, 1888, s. 116, and County Courts Act, 1903, s. 3. And as to the power of transfer from one court to another, see ss. 1–12 of the County Courts Act, 1919.

Art. 16.

in substance a tort, the plaintiff cannot merely by suing in contract entitle himself to a larger measure of damages (*d*).

Illustrations.

(1) A railway company owes to a passenger, irrespective of any contract, a duty to take care. The taking of a ticket also constitutes a contract to carry. If the servants of the railway company are negligent, whether by acts of omission or by acts of commission, the cause of action is in substance a tort, being a breach of a duty arising irrespective of contract, although in form the action might be framed as a breach of contract (*e*).

(2) A person who takes in a horse under a contract of agistment, impliedly undertakes not to be negligent in respect of the horse. But as he is a bailee for reward, the same duty to take care arises irrespective of the contract, and an action for not taking care is in substance an action of tort for negligence (*f*). So in all cases of actions between bailor and bailee, if the duty arises out of the bailment at common law, a breach of that duty gives rise to an action for tort; but if the duty only arises out of a contract between the parties, and would not apart from such contract arise from the mere relationship of bailor and bailee, a breach of the duty is properly the subject of an action for breach of contract (*g*).

(3) Where a mare put in a field for agistment, in which field a horse had also been placed for agistment, and subsequently the horse was found with a broken foreleg and had to be destroyed, it was held that the defendant was not liable to the owner of the injured horse for putting the mare in that field without notifying the plaintiff, because a mare is not a dangerous thing which must be kept under control at its owner's peril, being (in the absence of knowledge to the contrary) *mansuetæ naturæ* (*gg*).

(*d*) *Chinery* v. *Viall*, 5 H. & N. 295; *Belsize Motor Supply Co.* v. *Cox*, [1914] 1 K. B. 244.

(*e*) *Taylor* v. *Manchester, Sheffield and Lincolnshire Rail. Co.*, [1895] 1 Q. B. 134 [C. A.]; *Kelly* v. *Metropolitan Rail. Co.*, [1895] 1 Q. B. 944 [C. A.].

(*f*) *Turner* v. *Stallibrass*, [1898] 1 Q. B. 56 [C. A.].

(*g*) *Ibid.*, at p. 59, *per* COLLINS, L.J.

(*gg*) *Manton* v. *Brocklebank*, [1923] 2 K. B. 212 [C. A.].

Art. 17.

ART. 17.—*Privity not necessary where the Remedy is in Tort.*

When something done in pursuance of a contract between two persons gives rise to a relationship between one of them and a third person, such that the one owes a duty to the third person, irrespective of the contract, the third person cannot sue on the contract because he is not privy to it, but he can sue in tort for breach of the duty arising, irrespective of the contract. The grounds and extent of liability under a duty apart from contract are not clearly deducible from the recent cases; but it would seem that such a duty to warn third parties exists where the subject-matter of the contract is of a dangerous character and the use of it by third persons of the class in fact injured could reasonably be contemplated by the defendant. (See Salmond on Torts, 6th ed., pp. 462–471; Pollock on Torts, 12th ed., pp. 512–515.)

Illustrations.

(1) A man employs a surgeon to attend his wife or his infant son. By reason of the surgeon's negligence, the patient is injured. There is a contract between the man who calls in the surgeon and the surgeon, but none between the surgeon and the patient. But irrespective of the contract, the surgeon owes a duty to take care by reason of the relationship of surgeon and patient. And for breach of this duty the *patient* can sue in tort (*h*).

(2) A passenger by train lost his luggage by reason of the negligence of the company's servants. The passenger's fare had been paid by his master. There was accordingly no contract between the passenger and the railway company—nevertheless the company were *as bailees* bound to

(*h*) *Gladwell* v. *Steggall*, 5 Bing. N. C. 733; *Pippin* v. *Sheppard*, 11 Price, 400.

Art. 17.

take care of the passenger's luggage, and for breach of that duty the passenger could sue in tort (*i*).

(3) But when no duty, irrespective of contract, can be shown, a person who is injured by another's negligence in carrying out a contract has no cause of action. Thus, in *Le Lievre* v. *Gould* (*l*), mortgagees lent money by instalments to a builder, on the faith of certificates negligently granted by the defendant, who was a surveyor appointed, not by the mortgagees, but by the builder's vendor. The certificates were inaccurate, and the mortgagees thereby suffered loss, for which they claimed compensation from the defendant:—*Held*, that as there was no contractual relation between them, the defendant owed no duty to the plaintiffs, and the action could not be maintained. It was urged that a certificate carelessly issued was as dangerous as an ill-made gun or a poisonous hair-wash, and that on that ground the defendant was liable; but the court would not admit the analogy. Of course, however, if the certificates had been *fraudulent*, *i.e.*, issued with intent to deceive the plaintiffs, then, independently of any contractual relation, the defendant would have been liable in an action of deceit.

(4) So, too, when A. built a coach for the Postmaster-General, B. horsed it and hired C. to drive it, the coach broke down from a defect in its construction, and C. was consequently injured, it was held that A. **owed no duty to C. apart from contract,** therefore C. could not sue A. in tort. Nor, of course, could C. have sued A. in contract, as C. was no party to the contract between A. and B., and A. was no party to the contract between B. and C. (*m*).

(5) A wholesale druggist sold to a retailer a dangerous drug bearing a false label. The retailer sold it to a doctor who sold it to a patient, and the latter took it on the faith of the label and was thereby injured. Despite the absence

(*i*) *Marshall* v. *York, Newcastle and Berwick Rail. Co.*, 11 C. B. 655; *Meux* v. *Great Eastern Rail. Co.*, [1895] 2 Q. B. 387 [C. A.], where the duty is shown to be one of commission, not of omission.

(*l*) [1893] 1 Q. B. 491 [C. A.]; and see *Blacker* v. *Lake & Elliot* (1912), 106 L. T. 533; *White* v. *Steadman*, [1913] 3 K. B. 341.

(*m*) *Winterbottom* v. *Wright*, 10 M. & W. 109, followed in *Earl* v. *Lubbock*, [1905] 1 K. B. 253 [C. A.].

of privity the court held the wholesale druggist liable to the injured party (*n*). Art. 17.

ART. 18.—*Duties gratuitously undertaken.*

When a person gratuitously undertakes to perform any service for another, then, although no action will lie for not performing the service (there being no consideration for the promise), yet an action will lie for negligence in the performance of it (*o*).

A duty to take care may arise apart from any contract whatever, and for breach of that duty the remedy is an action of tort.

(1) Thus, where the defendant gratuitously promised the plaintiff to remove several hogsheads of brandy from one cellar to another, and, in doing so, one of the casks got staved through his gross negligence. Upon these facts it was decided that the defendant was liable; for although his contract could not have been enforced against him, yet, having once entered upon the performance of it, he thence became liable for all misfeasance. The ground of this liability appears to be the duty to take care which arises from the owner having entrusted his property to the defendant (*o*). Illustrations.

(2) Again, a keeper of a coffee-house gratuitously undertook the custody of money for a customer. It was lost whilst in his care by his negligence. He was held liable in an action for breach of the duty to take care arising from his becoming bailee of the money (*p*).

(3) Where the plaintiff was invited by the defendants' servant to ride on an engine, and he did so for his own convenience, and was injured by the negligence of the defendants' servants, the defendants were held liable; as by gratuitously undertaking to carry the plaintiff, the

(*n*) *Thomas* v. *Winchester* (1852), 6 New York 397, approved in *Dominion Natural Gas Co.* v. *Collins*, [1909] A. C. 640. See Art. 82, *post*.

(*o*) *Coggs* v. *Bernard*, 1 Sm. L. C. 177.

(*p*) 2 A. & E. 256.

Art. 18.

defendants came under a duty to exercise care, and they were liable in an action of tort for breach of that duty (*q*).

Gratuitous loans.

(4) As to chattels loaned gratuitously, the duty of the lender is to disclose any dangerous quality of which he actually knows (*r*).

(*q*) *Harris* v. *Perry & Co.*, [1903] 2 K. B. 219 [C. A.], followed in *Karavias* v. *Callinicos*, [1917] W. N. 323 [C. A.]; *Samson* v. *Aitchison*, [1912] A. C. 844 [P. C.]; *Pratt* v. *Patrick*, [1924] 1 K. B. 488.

(*r*) *Coughlin* v. *Gillison*, [1899] 1 Q. B. 145.

CHAPTER IV.

VARIATION IN THE GENERAL PRINCIPLE WHERE THE UNAUTHORISED ACT OR OMISSION TAKES PLACE OUTSIDE THE JURISDICTION OF OUR COURTS.

ART. 19.—*Torts committed Abroad.*

AN action will lie in the English courts for a tort committed outside England, provided :

(a) It is actionable according to English law and not justifiable according to the law of the country where it was committed (*a*) ; and

(b) It is a tort which is not of a purely local nature, such as a trespass to, or ouster from, land, or a nuisance affecting hereditaments, for to such torts the *lex situs* or law of the country in which the property lies applies and English courts will not administer this law (*aa*).

(c) It would be a tort if committed within our territorial jurisdiction and is in fact committed at sea (*aaa*).

Note, that in order to comply with paragraph (a) it is not necessary that the tort should be **actionable** according to the

(*a*) *Machado* v. *Fontes*, [1897] 2 Q. B. 231 [C. A.]; *Carr* v. *Fracis Times & Co.*, [1902] A. C. 176. As to the Admiralty jurisdiction for damages from collision on the high seas or in foreign waters and where both ships were foreign, see *The Invincible*, 2 Gall. 29, and *The Diana* (1862), Lush. 541.

(*aa*) *British South Africa Co.* v. *Companhia de Moçambique*, [1893] A. C. 602.

(*aaa*) *The Tubantia*, [1924] P. 78. *Per* Lord MERRIVALE, P.

Art. 19. law of the country where the act was committed, provided that it is **not justifiable** by that law; that is to say, that it is an act in respect of which civil or **criminal** proceedings may be taken in that country.

Illustrations.

(1) Thus, in the leading case of *Mostyn* v. *Fabrigas* (*b*) it was held that an action lay in England against the governor of Minorca for a false imprisonment committed by him in Minorca, the plaintiff being a native Minorquin.

(2) Some ammunition, which was British property, was seized on board a British ship by an officer of the British Navy in territorial waters of Muscat. The seizure was justifiable in Muscat under a proclamation of the Sultan of Muscat. It was held that no action lay for the seizure (*c*).

(3) So an action will lie in this country for a libel contained in a pamphlet in the Portuguese language and published in Brazil, even though libel be not actionable in Brazil, provided it be not justifiable in Brazil, *i.e.*, it is enough if it be punishable in Brazil (*d*).

(4) The English courts have no jurisdiction to entertain an action to recover damages for trespass to land situate abroad; injuries to proprietary rights in foreign real estate being outside their jurisdiction. So the courts have recently refused to try a case of trespass to lands in South Africa (*e*).

(*b*) 1 Sm. L. C. 591.

(*c*) *Carr* v. *Fracis Times & Co.*, [1902] A. C. 176.

(*d*) *Machado* v. *Fontes*, [1897] 2 Q. B. 231 [C. A.].

(*e*) See *British South Africa Co.* v. *Companhia de Moçambique*, *supra*, where the earlier cases are examined.

CHAPTER V.

OF PERSONAL DISABILITY TO SUE AND TO BE SUED FOR TORT.

ART. 20.—*Who may sue.*

(1) Every person may maintain an action for tort, except an alien enemy, or British subject adhering to the King's enemies (*a*), and a convict (sentenced to death or penal servitude) during his incarceration (*b*).

(2) A married woman may sue alone, and any damages recovered are her separate property (*c*).

(3) A husband cannot sue his wife in tort (*d*).

(4) A wife can sue her husband in tort "for the protection and security of her own separate property"; but cannot sue him otherwise in tort (*d*).

(5) A corporation cannot sue for a tort merely affecting its reputation, such as a libel charging the corporation with corrupt practices (*e*); unless (a) the statement would have been defamatory of an individual, and (b) it

(*a*) See *De Wahl* v. *Braune*, 1 H. & N. 178; *Netherlands South African Rail. Co.* v. *Fisher*, 18 T. L. R. 116.

(*b*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), ss. 8, 30.

(*c*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1; *Beasley* v. *Roney*, [1891] 1 Q. B. 509.

(*d*) *Phillips* v. *Barnet*, 1 Q. B. D. 436; and 45 & 46 Vict. c. 75, s. 12; *Tinkley* v. *Tinkley* (1909), 25 T. L. R. 264 [C. A.]; *Healey* v. *Healey*, [1915] 1 K. B. 938; *Hulton* v. *Hulton*, [1917] 1 K. B. 812; *Shipman* v. *Shipman*, [1924] 2 Ch. 140 [C. A.].

(*e*) *Manchester Corporation* v. *Williams*, [1891] 1 Q. B. 94.

Art. 20.

tends to cause actual damage to the corporation with regard to its business or property (*f*).

NOTE.—At common law husband and wife could not sue each other at all, nor could a married woman sue anyone without joining her husband as plaintiff. Now a married woman can sue alone anyone but her husband. She can also sue her husband for the protection and security of her separate property; but no corresponding right is given to him. If a husband claims possession of property from his wife he must proceed by originating summons to have the question determined in a summary manner by a judge (*g*).

Unborn child.

It is doubtful whether an action can be brought for injuries suffered by the plaintiff whilst he was still *en ventre sa mère*. It has been held in Ireland that an action for negligence would not lie in such circumstances (*h*), but it has been held in England that where a man was killed by negligence his child, unborn at the time of the accident, might claim damages under Lord Campbell's Act (*i*).

Alien enemy.

As to who is an alien enemy see the cases cited below; and note that an alien enemy registered under the Aliens Restriction Act, 1914, is deemed to have a licence to sue, from the Crown (*ii*).

Illustration.

Where a married woman who was in the habit of letting portions of her house to lodgers, and was prejudiced in obtaining lodgers through her husband's drunkenness, obtained an injunction excluding the husband from the house, which was her own property, notwithstanding the fact that it was the matrimonial home and operated as a separation (*j*).

ART. 21.—*Who may be sued for a Tort.*

(1) Every individual who commits a tort is liable to be sued, notwithstanding infancy,

(*f*) *South Hetton Coal Co.* v. *N. E. News Association*, [1894] 1 Q. B. 133.

(*g*) Married Women's Property Act, 1882, ss. 12, 17.

(*h*) *Walker* v. *Great Northern Rail. Co.*, 28 L. R. Ir. 69.

(*i*) *The George and Richard*, L. R. 3 Ad. & E. 466.

(*ii*) *Porter* v. *Freudenberg*, [1915] 1 K. B. 857; *Scotland* v. *South African Territories* (1917), 33 T. L. R. 255; *Schaffenius* v. *Goldberg*, [1916] 1 K. B. 284.

(*j*) *Shipman* v. *Shipman*, [1924] 2 Ch. 140 [C. A.].

coverture, or unsoundness of mind; *except* (1) the Sovereign (*k*), (2) foreign sovereigns, including "protected" sovereigns (*kk*), (3) ambassadors of foreign powers (*kkk*). But foreign sovereigns can waive their privilege and that of their ambassadors (*l*). Art. 21.

(2) A corporation which commits a tort is as liable to be sued as a private individual would be. The test of liability for the torts of its servants or agents is the fact of authority or ratification by the directing body of the company (*m*). The doctrine of *ultra vires*, usually based as to a company's torts on the decision in *Poulton* v. *L. & S. W. Ry. Co.* (*n*), is, it is submitted, only applicable to negative *implied* authority to do acts *ultra vires*, and cannot affect liability for acts expressly authorised.

(3) Unincorporated bodies (*nn*).

(4) No action for tort can be brought against a trade union, nor can an injunction be granted against a trade union in respect of tortious acts (*nnn*).

(*k*) *Tobin* v. *Reg.* (1864), 16 C. B. (N.S.) 310; *Att.-Gen.* v. *De Keyser*, [1920] A. C. at p. 532; *Macgregor* v. *Lord Advocate* (1921), S. C. 847.

(*kk*) *Mighell* v. *Sultan of Johore*, [1894] 1 Q. B. 149 [C. A.]; *The Gargara*, [1919] P. 95; *Duff Development Co.* v. *Government of Kelantan*, [1924] A. C. 797.

(*kkk*) *Magdalena Co.* v. *Martin*, 28 L. J. Q. B. 310; *Suarez* v. *Suarez*, [1918] 1 Ch. 176.

(*l*) *Duke of Brunswick* v. *King of Hanover*, 6 Bea. 1.

(*m*) *The National Bank* v. *Graham* (1879), 100 U. S. 702; *Salt Lake City* v. *Hollister* (1885), 118 U. S. 260; and see Salmond on Torts, 6th ed., pp. 64-68; *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423.

(*n*) (1867), L. R. 2 Q. B. 534; *Ormiston* v. *G. W. Ry.*, [1917] 1 K. B. 598.

(*nn*) *Taff Vale Rail. Co.* v. *Amalgamated Society of Railway Servants*, [1901] A. C. 426; *The Bearn*, [1906] P. 48 [C. A.].

(*nnn*) *Ware & De Freville* v. *Motor Trades Assocn.*, [1921] 3 K. B., pp. 75, 92 [C. A.].

Art. 21.

Comment.

An infant is only liable on contracts for "necessaries" and "for his benefit," and the law will *not* permit other contractual obligations of an infant to be enforced by framing the action in tort.

Illustrations. Infants.

(1) Thus, if an infant hires a horse he is liable in an action of negligence for immoderately riding the horse, for, as bailee, he is bound to take care of the horse, and the breach of that duty is a tort (*o*). But he would not be liable in an action of *contract* founded on the hiring (*p*).

(2) An infant, however, cannot be sued in tort if such an action would be only an indirect way of enforcing a contract on which he is not liable. So if goods (not being necessaries) are delivered to him under a contract of sale and he does not pay for them, he cannot be sued for converting them to his own use, for that would be only another way of recovering the price (*q*). Nor, if an infant induces another to contract with him *by representing that he is of age*, can he be sued in an action for deceit, for that would be only another way of recovering damages for breach of the contract (*r*).

Lunatics.

(3) There is not much authority upon the liability of *lunatics* for their torts. KELLY, C.B., says lunacy is no defence in an action for a wrong, as libel or assault (*s*). But ESHER, M.R., suggests that his liability in libel depends on "whether he is sane enough to know what he is doing" (*t*). Lord KENYON points out in *Haycroft* v. *Creasy* (*u*) the distinction between answering *civiliter et criminaliter* for acts injurious to others. "In the latter case the maxim applied *actus non facit reum nisi mens sit rea*, but it was otherwise in civil actions where the intent was immaterial if the act done were injurious to

(*o*) *Burnard* v. *Haggis*, 14 C. B. (N.S.) 45, followed in *Walley* v. *Holt*, 35 L. T. 631.

(*p*) *Jennings* v. *Rundall*, 8 Term Rep. 335.

(*q*) *Per cur.* in *Manby* v. *Scott*, 1 Sid. 109 [Ex. Ch.].

(*r*) See *Johnson* v. *Pie*, 1 Keble, 905, 913; *Bartlett* v. *Wells*, 1 B. & S. 836; *Leslie* v. *Shiel*, [1914] 3 K. B. 616 [C. A.].

(*s*) *Mordaunt* v. *Mordaunt*, L. R. 2 P. & D. 102, 142.

(*t*) *Emmens* v. *Pottle*, 16 Q. B. D. 354, 356 [C. A.].

(*u*) 2 East, 92, at p. 104.

another." And no doubt a lunatic is generally liable in tort (*v*). **Art. 21.**

(4) A governor of a colony is not a sovereign. He may be sued for tort in the courts of his own colony or in this country (*w*). Colonial governors.

(5) The entity and therefore the liability of a corporation is separate from that of its directors (*ww*), and actions of tort can of necessity only arise for acts or omissions of their directors or servants or agents, and the difficulty in such cases is the same as arises in other cases of the responsibility of a principal for the acts of his agent, viz., the difficulty of determining whether or not the act or omission complained of was within the scope of the general authority or duty of such servant or director (*x*). Corporations.

It is now settled that a corporation may be made liable for the acts of its servants in which malice in fact is material, *i.e.*, in malicious prosecution.

And, on the same principle, a corporation may be liable for publishing a libel on a privileged occasion. Though a corporation cannot itself be guilty of actual malice, it is liable if its agent in publishing the libel is actuated by malice (*a*).

(6) Trade unions registered under the Trade Union Acts, 1871 and 1876, are associations of masters or of workmen empowered to hold property, and with limited powers of suing and being sued in contract. Trade unions.

It was held in the famous Taff Vale Case (*b*) that there was nothing in these Acts to prevent an action for tort

(*v*) See also *per* ESHER, M.R., in *Hanbury* v. *Hanbury*, 8 T. L. R. 559 [C. A.], at p. 560.

(*w*) *Mostyn* v. *Fabrigas*, 1 Cowp. 161; *Phillips* v. *Eyre*, L. R. 6 Q. B. 1; *Musgrave* v. *Pulido*, 5 App. Cas. 102.

(*ww*) *Rainham Chemical Works* v. *Belvedere*, [1921] 2 A. C., at pp. 475 and 488; *British Thompson-Houston Co.* v. *Sterling Accessories*, [1924] 2 Ch. 33.

(*x*) See Chapter VI.

(*a*) *Cornford* v. *Carlton Bank*, [1899] 1 Q. B. 392, following *Edwards* v. *Midland Rail. Co.*, 6 Q. B. D. 287; *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423.

(*b*) *Taff Vale Rail. Co.* v. *Amalgamated Society of Railway Servants*, [1901] A. C. 426.

Art. 21.

being brought against an unincorporated body, *e.g.*, a trade union. But the Trade Disputes Act, 1906, s. 4 (*c*), provides "an action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union, in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court." This gives trade unions complete immunity from actions of tort, and from injunctions in respect thereof.

ART. 22.—*Joint Tort-feasors.*

(1) Persons who jointly commit a tort may be sued jointly or severally; and if jointly, the damages may be levied from both or either (*d*).

(2) A judgment against one of several joint tort-feasors is a bar to an action against the others, even although the judgment remains unsatisfied (*e*).

(3) A release of one of several joint tort-feasors is a bar to an action against the others (*f*); but a mere covenant not to sue one of them is not (*g*).

(4) If damages are levied upon one only, then (a) where the tort consists of an act or omission, the illegality of which he must be presumed to have known, he will have no right to call upon the others to contribute (*h*). But (b)

(*c*) 6 Edw. 7, c. 47.

(*d*) *Hume* v. *Oldacre*, 1 Stark. 351; *Blair and Sumner* v. *Deakin, Eden and Thwaites* v. *Deakin*, 57 L. T. 522.

(*e*) *Brinsmead* v. *Harrison*, L. R. 7 C. P. 547 [Ex. Ch.]; but as to the test of who is a joint tort-feasor, see *The Koursk*, [1924] P. 140.

(*f*) *Cocke* v. *Jennor*, Hob. 66; *Howe* v. *Oliver* (1908), 24 T. L. R. 781.

(*g*) *Duck* v. *Mayeu*, [1892] 2 Q. B. 511 [C. A.].

(*h*) *Merryweather* v. *Nixan*, 8 Term Rep. 186. But this does not apply to general average contribution; see Maritime Conventions Act, 1911, s. 3, and *Austin Friars SS. Co., Ltd.* v. *Spillers & Bakers, Ltd.*, [1915] 3 K. B. 586.

Art. 22.

where the tort consists of an act not obviously unlawful in itself (*e.g.*, trover by a person from whom the same goods are claimed by adverse claimants), he may claim contribution or indemnity against the party really responsible for the tort; and this right is not confined to cases where he is the agent or servant of the other tort-feasor (*i*).

NOTE.—When two or more persons join in committing a tort, each is responsible for the whole of the injury sustained by their common act. To constitute two persons joint tort-feasors, they must act together in furtherance of a common design, or one must aid, counsel, or direct the other. If two persons acting quite independently contribute by their separate acts to the same damage, they are not joint tort-feasors. So, too, persons independently repeating the same slander, or independently making a noise or obstruction which is a nuisance, are not joint tort-feasors (*k*).

One cause of action.

Against two or more joint tort-feasors there is **only one cause of action,** and if that cause of action is **released** or **merged in a judgment,** no second action can be brought. So where A. and B. jointly converted C.'s piano to their own use, and judgment was recovered in an action against A. only, no further action could be brought against B., although the judgment against A. was unsatisfied. A. and B. might have been sued jointly in the first action, and then C. might have enforced the judgment against either of them (*l*).

Partners.

When a partner in a firm acting in the ordinary course of the business of the firm, or with the authority of his co-partners, commits a tort in regard to any third person, all the partners are jointly liable. Each member of the firm is also severally liable (*m*).

(*i*) *Adamson* v. *Jarvis*, 4 Bing. 66, 72; *Betts* v. *Gibbins*, 2 A. & E. 57; *Bank of England* v. *Cutler*, [1908] 2 K. B. 208.

(*k*) See *Sadler* v. *Great Western Rail. Co.*, [1896] A. C. 450.

(*l*) *Brinsmead* v. *Harrison*, L. R. 7 C. P. 547 [Ex. Ch.].

(*m*) Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 10, 12.

CHAPTER VI.

LIABILITY FOR TORTS COMMITTED BY OTHERS.

SECTION I.—LIABILITY OF HUSBAND FOR TORTS OF WIFE.

ART. 23.—*Wife's ante-nuptial and post-nuptial Torts.*

(1) A married woman may be sued alone in respect of her ante-nuptial torts. Her husband is also liable to the extent of the property which he received with her; and he may be sued either jointly with her or alone (*a*).

(2) A married woman may also be sued alone in respect of her *post-nuptial* torts (*b*), but notwithstanding the Married Women's Property Act, 1882, her husband is also liable, and may be joined with her as defendant *unless* the tort arises directly out of a contract with the wife and is the means of enforcing it (*c*).

(3) The liability of a husband for his wife's torts comes to an end by the death of the wife, or by divorce or judicial separation (*d*), or during the operation of a separation order under the Married Women's (Summary Jurisdiction) Act, 1895, s. 6. But a voluntary

(*a*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 13–15. As to ante-nuptial debts of the wife, see *Beck* v. *Pierce*, 23 Q. B. D. 316.

(*b*) *Ibid.*, s. 1.

(*c*) *Seroka* v. *Kattenburg*, 17 Q. B. D. 177; *Earle* v. *Kingscote*, [1900] 1 Ch. 203; *Cuenod* v. *Leslie*, [1909] 1 K. B. 880 [C. A.], approved in *Edwards* v. *Porter*, [1925] A. C. 1; *Waterhouse* v. *Wilson-Barker, Times* Newspaper, 24 March 1925.

(*d*) Matrimonial Causes Act, 1857, s. 26.

Art. 23.

separation by deed does not affect the husband's liability (*e*).

Before the Married Women's Property Act, 1882, a wife could not be sued alone for a tort. Her husband was necessarily joined as defendant in an action of tort brought against her, as all her property vested in him during coverture, and there was therefore no means of satisfying a judgment obtained against her alone. Since the passing of the Married Women's Property Act, a married woman is capable of holding separate property, and judgment may be had against her to the extent of her separate property, and to that extent the Act provides that she is liable for, and may be sued alone for, her torts as if she were a *feme sole*. This enactment, however, does not affect the common-law liability of a husband for his wife's torts (*f*); and, consequently, a plaintiff can elect whether he will sue the wife alone, or join her husband as co-defendant with her. Where husband and wife are joined as defendants inconsistent defences cannot be put in (*g*).

Death or divorce.

If the wife dies or the marriage is dissolved (*h*), from that moment the husband's liability ceases, even for torts committed during coverture, and even though an action is pending. Unless judgment has been actually given, his liability is at an end from the moment of her death or the decree absolute.

Separation.

The same rule applies where the parties are judicially separated (*i*). The decree puts an end to the husband's liability from the moment when it is pronounced. But where the parties are living apart under a voluntary separation, a husband's liability for his wife's torts continues (*j*).

(*e*) *Utley* v. *Mitre Publishing Co.* (1901), 17 T. L. R. 720.

(*f*) *Seroka* v. *Kattenburg*, 17 Q. B. D. 177; *Cuenod* v. *Leslie*; *Edwards* v. *Porter*, *supra*; *Waterhouse* v. *Wilson-Barker*, *Times* Newspaper, 24 March 1925.

(*g*) *Beaumont* v. *Kaye*, [1904] 1 K. B. 292.

(*h*) *Capel* v. *Powell*, 17 C. B. (N.S.) 743.

(*i*) Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 26; *Cuenod* v. *Leslie*, [1909] 1 K. B. 880 [C. A.].

(*j*) *Head* v. *Briscoe*, 5 C. & P. 484; *Utley* v. *Mitre Publishing Co.* (1901), 17 T. L. R. 720.

SECTION II.—LIABILITY OF PARTNERS FOR EACH OTHER'S TORTS.

Art. 23.

"Partnership is the relation which subsists between persons carrying on a business in common with a view of profit" (*k*). Definition.

The foundation of the liability of partners for each other's torts is that each partner is the agent of his copartners in relation to the conduct of the partnership business. The law has now been codified by ss. 10 and 12 of the Partnership Act, 1890.

ART. 24.—*Statutory Rule.*

(1) Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his copartners, loss or injury is caused to any person not being a partner in the firm, the firm is liable therefor to the same extent as the partner so acting or omitting to act. Partnership Act, 1890, s. 10.

(2) When the firm is liable, the individual partners are jointly and severally liable. Section 12.

In order to render a firm liable, the tort must be a wrongful act or omission of a partner committed or made either (1) with the authority of his copartners, or (2) in the ordinary course of the firm's business (*kk*). If, therefore, it be committed or made without the actual authority of the copartners, and outside the scope of the partner's ostensible authority, the firm will not be liable any more than it would be for a contract entered into under similar circumstances.

(1) Thus a firm of solicitors would be liable for the professional negligence and unskilfulness of one of the partners (*l*). Similarly, a firm of newspaper proprietors Illustrations. Negligence. Libel.

(*k*) Partnership Act, 1890, s. 1.

(*kk*) *Hamlyn* v. *Houston*, [1903] 1 K. B. 81.

(*l*) *Blyth* v. *Fladgate*, *Morgan* v. *Blyth*, *Smith* v. *Blyth*, [1891] 1 Ch. 337.

Art. 24.

would be liable for a libel inserted by an editor partner. So, a firm of company promoters would be liable for a fraudulent prospectus issued in the course of business by an individual partner. In all these cases the inquiry is simply whether the wrongful act or omission was done or made in the course of the partner's duty as such, or outside it.

Fraudulent guarantees.

(2) There is one tort from which the firm is specially exempted from liability by the Statute of Frauds Amendment Act, 1828 (*m*), by which it is enacted that the firm is not to be liable for false and fraudulent representation as to the character or solvency of any person, unless the representation is in writing **signed by all the partners.** The signature of the firm's name is insufficient even although all the partners are privy to the misrepresentation (*n*).

SECTION III.—LIABILITY FOR TORTS OF AGENTS AUTHORISED EXPRESSLY OR BY RATIFICATION.

ART. 25.—*Qui facit per alium facit per se.*

A person who expressly authorises another to commit a tort is liable as fully as if he had himself committed the tort. And the agent is also liable. In tort a person cannot excuse himself by saying that he was acting as the agent of another. Agent and principal are equally liable.

NOTE.—A principal is not, however, necessarily answerable for every tort of his agent. If the agent is employed to commit a tort the principal is clearly liable. If the agent is employed to do a thing not in itself wrongful, and in the course of doing the thing for which he is employed he commits a tort, the extent of the principal's liability depends, as we shall see hereafter, partly on whether the agent is a servant or an independent contractor.

(*m*) 9 Geo. 4, c. 14, s. 6 ; explained in *Banbury* v. *Bank of Montreal*, [1918] A. C. 626.

(*n*) *Swift* v. *Jewsbury*, L. R. 9 Q. B. 301 [Ex. Ch.].

Art. 26.

ART. 26.—*Ratification of Tort committed by an Agent.*

A tortious act done for another, by a person not assuming to act for himself, but for such other person (*o*), though without any precedent authority whatever, becomes the act of the principal if subsequently ratified by him, and, whether it be for his detriment or his advantage, to the same extent as if the same act had been done by his previous authority (*p*).

This rule is generally expressed by the maxim, "*Omnis ratihabitio retrotrahitur, et mandato priori æquiparatur*," and is equally applicable to torts and to contracts.

To constitute a binding ratification of acts done without previous authority (1) the acts must have been done for and in the name of the supposed principal, and (2) full knowledge of them, and unequivocal adoption, must be proved; or else the circumstances must warrant the clear inference that the principal was adopting the acts of his supposed agent, whatever their nature or culpability (*q*).

Illustration.

The plaintiff's goods were illegally seized under a warrant of distress handed to a bailiff by the defendants. The plaintiff wrote to the defendants seeking reparation. The defendants replied that their solicitors would accept process of service. The defendants had given no special instructions to the brokers. It was held in the Court of Appeal that there was ample evidence of ratification by the defendants, and that they were liable for the wrongful seizure made by the bailiff on their behalf (*r*).

(*o*) See *Eastern Construction Co., Ltd.* v. *National Trust Co., Ltd.*, [1914] A. C. at p. 213.

(*p*) *Wilson* v. *Tumman*, 6 Man. & Gr. 236, 242.

(*q*) *Marsh* v. *Joseph*, [1897] 1 Ch. 213 [C. A.]; *Wilson* v. *Tumman*, *supra*; and *Keighley, Maxsted & Co.* v. *Durant*, [1901] A. C. 240; *Barns* v. *St. Mary Islington* (1912), 76 J. P. 11; *Becker* v. *Riebold* (1913), 30 T. L. R. 142.

(*r*) *Carter* v. *St. Mary Abbot's, Kensington, Vestry*, 64 J. P. 548 [C. A.].

Art. 27.

SECTION IV.—LIABILITY FOR TORTS OF SERVANTS.

ART. 27.—*Respondeat Superior.*

(1) A servant is a person employed by another, and subject to the commands of that other as to the way he shall do his work.

(2) A person who is in the general employment of one man may be the servant of another for a particular purpose, that other having control of him as to the manner in which he carries out his duties in connection with that particular purpose (*s*).

(3) A master is liable for the negligence of his servant committed in the course of his employment (*t*).

(4) A master is liable for the wilful tort of his servant committed within the scope of and in the course of his employment though the tort amounts also to a crime, and though committed purely for the servant's benefit (*u*).

It is submitted that despite the apparent conflict of the decisions as to a master's liability for the wilful tort of his servant, the true test is as stated above in paragraph (4). The cases appear to fall into three groups: (1) Where the servant was not about his master's business at the time of committing the tort. (2) Where he was about his master's business but the tortious act could arise only from doing an act the master had not held him out as competent to do. (3) Where he was about his master's

(*s*) *Murray* v. *Currie* (1870), L. R. 6 C. P. 24; *Jones* v. *Liverpool Corporation* (1885), 14 Q. B. D. 890; *Donovan* v. *Laing*, [1893] 1 Q. B. D. 629; *Bain* v. *Central Vermont Rail. Co.*, [1921] 2 A. C. 412 [P. C.].

(*t*) *Jefferson* v. *Derbyshire Farmers*, [1921] 2 K. B. 281 [C. A.].

(*u*) *Lloyd* v. *Grace Smith & Co.*, [1912] A. C. 716, modifying *Barwick* v. *English Joint Stock Bank* (1867), L. R. 2 Ex. 259.

Art. 27.

business and the act constituting the tort arose from doing an act the master had held the servant out as competent to do. Into group (1) fall cases like *Storey* v. *Ashton* (1869), L. R. 4 Q. B. 476, and *Beard* v. *L. G. O. Co.*, [1900] 2 Q. B. 530. Into group (2) fall cases like *Cheshire* v. *Bailey*, [1905] 1 K. B. 237; *Houghton* v. *Pilkington*, [1912] 3 K. B. 308; and *Mintz* v. *Silverton* (1920), 36 T. L. R. 399. Into group (3)—the group of liability—come *Lloyd* v. *Grace Smith & Co.*, [1912] A. C. 716; *Irwin* v. *Waterloo Taxi Cab Co., Ltd.*, [1912] 3 K. B. 588.

What constitutes a servant.

The test to be applied to ascertain whether a person doing work for another is or is not his **servant,** is to consider whether the master has complete control of him as to the way he does his work. If he has, the person employed is a servant, and the master is liable for the consequences, because he has made himself responsible not only for the act itself, but for the manner of doing it. Thus, the relation of master and servant is in each case a **question of fact,** depending not on the mode of payment for services, or the time for which the services are engaged, or the nature of those services, or on the power of dismissal (though each of those matters may be taken into consideration), but on the extent of control as to the way in which the work is done (*v*).

Scope of employment.

Whether a servant is acting within the scope of his employment is a question partly of law and partly of fact. Generally, as long as a servant is doing the kind of thing for which he is employed, he is acting within the scope of his employment, though he may have had no express command to do the particular thing complained of. But even whilst doing things of the kind for which he is employed, he gets outside the scope of his employment when he does them not for his master's benefit but for his own private purposes (*w*), as when a coachman, without the

(*v*) Cf. *Hillyer* v. *St. Bartholomew's Hospital*, [1909] 2 K. B. 820, and *E. London Harbour Board* v. *Caledonia, etc. Co.*, [1908] A. C. 271; and *Baker* v. *Snell*, [1908] 2 K. B. 825; *Bain* v. *Central Vermont Rail. Co.*, [1921] 2 A. C. 412 [P. C.].

(*w*) *Storey* v. *Ashton* (1869), L. R. 4 Q. B. 476.

Art. 27. permission of his master, takes out his master's carriage and drives it for his own purposes.

Illustrations. As to who are servants.

(1) Thus where an owner of a carriage was supplied by a livery-stable keeper with a driver (who was in his employment as a coachman), and the owner of the carriage was also **owner of the horse and harness,** it was held by RUSSELL, C.J., that in all the circumstances of the case the owner of the carriage had control of the driver as to the manner of driving, and the driver was his servant. The owner of the horse and harness would be the person to give directions as to the way in which the horse should be harnessed and driven, and so had control of the driver as to the way in which he should do his work, and accordingly the owner of the carriage was liable for damage done by the negligence of the driver in driving (*x*).

(2) But where two ladies, owners of a carriage, *hired horses* from a livery stable, and with the horses a driver, whom they put into their livery, but to whom they did not pay wages, it was held that the driver was not their servant, and they were not liable for his negligence. The ladies would no doubt give directions as to the places to which they should be driven, but not as to the manner in which the horses should be driven (*y*).

Cabdrivers.

(3) It is held that under the Metropolitan Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), and by the Town Police Clauses Act, 1847 (*yy*), so far as the public is concerned, the proprietor of a hackney carriage is responsible for the acts of the driver whilst plying for hire, as if the relationship of master and servant existed between them, although, in fact, no such relationship exists, the relationship apart from statute being that of bailor and bailee, and not that of master and servant (*z*). But if the driver is in fact the servant of some person other than the proprietor, that person may also be liable as the driver's master (*a*).

(*x*) *Jones* v. *Scullard,* [1898] 2 Q. B. 565.
(*y*) *Quarman* v. *Burnett,* 6 M. & W. 499.
(*yy*) *Bygraves* v. *Dicker,* [1923] 2 K. B. 591.
(*z*) *Venables* v. *Smith,* 2 Q. B. D. 279; and *King* v. *London Improved Cab Co.,* 23 Q. B. D. 281 [C. A.].
(*a*) *Keen* v. *Henry,* [1894] 1 Q. B. 292.

Art. 27.

Servant for particular purpose.

(4) In *Rourke* v. *White Moss Colliery Co.* (*b*) the defendants were sinking a shaft in their colliery and agreed with one Whittle to do the sinking at so much per yard. The defendants agreed to supply an engine and engineer at the mouth of the shaft. The engineer was employed and paid by the defendants, and was their general servant, but was at the time under the orders and control of Whittle, and it was held that he was, for the particular purpose, the servant not of the defendants but of Whittle, and consequently the defendants were not liable for his negligence.

The tort must be committed in the course of the employment.

(5) Where a master entrusted his servant with his carriage for a given purpose, and the servant drove it for another purpose of his own in a different direction, and in doing so drove over the plaintiff, the master was held not to be responsible, on the ground that the wrong was not committed in the course of his employment (*c*). But if the servant when going on his master's business had merely taken a somewhat longer road, such a deviation would not have been considered as taking him out of his master's employment (*d*).

Course of employment.

(6) And where a servant does a kind of work for which he is not engaged, he is not acting within the course of his employment so as to make the master liable for his negligence. Thus, when an omnibus conductor drove the omnibus, and whilst so doing negligently ran into the plaintiff, it was held that, in the absence of evidence that the conductor was authorised to drive the omnibus, the defendants were entitled to judgment (*e*).

Wilful torts.

(7) The plaintiff went to the defendants, a firm of solicitors, for the purpose of selling some property, and saw their managing clerk, who induced her to convey the property to himself for the purpose of the sale. The clerk

(*b*) 2 C. P. D. 205 [C. A.], and see *Donovan* v. *Laing, Wharton, and Down Construction Syndicate*, [1893] 1 Q. B. 629 [C. A.], followed in *Société Maritime Française* v. *Shanghai Dock Co.*, [1921] 2 A. C. 417; *Murray* v. *Currie* (1870), L. R. 6 C. P. 24.

(*c*) *Storey* v. *Ashton*, L. R. 4 Q. B. 476.

(*d*) *Mitchell* v. *Crassweller*, 22 L. J. C. P. 100.

(*e*) *Beard* v. *London General Omnibus Co.*, [1900] 2 Q. B. 530 [C. A.].

Art. 27.

then sold the property in his own name, and absconded with the proceeds:—*Held*, the defendants were liable; as the clerk was carrying out the duties for which he was employed, they were liable although he in fact acted only for his personal benefit (*f*).

Wrongful arrest by servants.

(8) In *Poulton* v. *London and South Western Rail. Co.* (*g*), a station-master having demanded payment for the carriage of a horse conveyed by the defendants, arrested the plaintiff and detained him in custody until it was ascertained by telegraph that all was right. **The railway company had no power whatever to arrest a person for non-payment for carriage of a horse,** and therefore the station-master, in arresting the plaintiff, did an act that was wholly illegal, not in the mode of doing it, but in the doing of it at all. Under these circumstances, the court held that the railway company were not responsible for the act of their station-master; and MELLOR, J., said: "If the station-master had made **a mistake in committing an act which he was authorised to do,** I think in that case the company would be liable, because it would be supposed to be done by their authority. Where the station-master acts in **a manner in which the company themselves would not be authorised to act,** and under a mistake or misapprehension of what the law is, then I think the rule is very different, and I think that is the distinction on which the whole matter turns."

(9) In an earlier case in which a station-master and a policeman employed by a railway company wrongfully arrested a man for not paying his fare, the company was held liable, as **the company had power to arrest a passenger for travelling without paying his fare,** and must be taken to have authorised the officials to take into custody persons whom they believed to be committing that offence. The officials made a mistake in the particular case, but it was **"a mistake made within the scope of their authority"** (*h*).

(*f*) *Lloyd* v. *Grace Smith & Co.*, [1912] A. C. 716.

(*g*) L. R. 2 Q. B. 534, followed in *Ormiston* v. *G. W. Rail. Co.*, [1917] 1 K. B. 598.

(*h*) *Goff* v. *Great Northern Rail. Co.*, 3 E. & E. 672, applied in *Percy* v. *Glasgow Corporation*, [1922] 2 A. C. 299.

Art. 27.

It is submitted that the two decisions last quoted, together with that in *Ormiston* v. *G. W. Rail. Co.* (1917), establish no more than this, that where an act is done by the servant of a company, and such act is *ultra vires* the company, authority to do such act cannot be *implied*. Nothing in these decisions tends to relieve a company from the consequences of the tortious acts of its servants if *expressly* authorised by the proper authority in the company.

Assaults by servant.

(10) So, again, in *Bayley* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (*i*) the plaintiff, a passenger on the defendants' line, sustained injuries in consequence of being pulled violently out of a railway carriage by one of the defendants' porters, who acted under the erroneous impression that the plaintiff was in the wrong carriage. The defendants' byelaws did not expressly authorise the company's servants to remove any person being in a wrong carriage, or travelling therein without having first paid his fare and taken a ticket, and they even contained certain provisions which implied that the passengers should be treated with consideration; but nevertheless the court considered that the act of the porter in pulling the plaintiff out of the carriage was an act done in the course of his employment as the defendants' servant.

In that case WILLES, J., says: "A person who puts another in his place to do a class of acts in his absence necessarily leaves him to determine according to the circumstances that arise when an act of that class is to be done and trusts him for the manner in which it is done; and consequently he is held answerable for the wrong of the person so entrusted either in the manner of doing such an act or in doing such an act under circumstances in which it ought not to have been done; provided that what was done was done, not from any caprice of the servant, but in the course of the employment."

Criminal acts.

(11) The defendants employed a manager to manage a branch of their business, which was the sale of furniture on the hire-purchase system. The manager sold a piece

(*i*) L. R. 7 C. P. 415.

Art. 27.

of furniture to a person living in the plaintiff's house, and on one of the instalments being in arrear he went to the plaintiff's house and removed the furniture. Whilst so doing he assaulted the plaintiff. The jury found that the manager committed the assault in the course of his employment, and it was held that the defendants were liable. The manager was employed to get back the furniture and committed the assault for the purpose of furthering that object and not for private purposes of his own, and the defendants were held liable for the wrongful act of their servant although the assault was a criminal offence (*j*).

Liability of a corporation.

(12) So, too, a corporation is liable for defamatory acts and malicious prosecutions and generally for all torts of its servants, provided the acts complained of are within the scope of the servant's employment (*k*).

ART. 28.—*Unauthorised Delegation by Servants.*

A master is not liable for the tortious acts of persons to whom his servant has, without authority, delegated his duties. A servant may have express authority, and in some cases may have implied authority, to delegate his duties to another, but if without such authority he delegates his duties to another, that other does not become the agent of the master. *Quære*, might not the master be liable if the act of the servant in so delegating amounts to negligence ? (*m*).

Illustrations.

(1) Thus, where the driver and conductor of an omnibus authorised a bystander to drive the omnibus (the driver having been ordered to discontinue driving by a policeman

(*j*) *Dyer* v. *Munday*, [1895] 1 Q. B. 742 [C. A.].

(*k*) *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423 [P. C.]; *Glasgow Corporation* v. *Lorimer*, [1911] A. C. 209.

(*m*) *Engelhart* v. *Farrant & Co.*, [1897] 1 Q. B. 240 [C. A.]; *R.* v. *Earl of Crewe*, [1910] 2 K. B. 576; *Roper* v. *Public Works Commissioners*, [1915] 1 K. B. 45.

who thought he was drunk), and the bystander, whilst driving, negligently injured the plaintiff, it was held that the defendants were not liable as the bystander was not their agent (*n*). Art. 28.

(2) But where the driver of a cart negligently left the cart in custody of a lad whose duty it was to go with the cart to deliver parcels, but had been forbidden to drive, and the lad drove the cart so that it collided with the plaintiff's carriage, the employer of the driver was held liable **for the negligence of the driver in leaving the cart in custody of the lad.** But the employer would not have been liable for the negligence of the lad, as he was not acting within the scope of his employment, and the driver had no authority to delegate the driving to him (*o*).

ART. 29.—*Servants of the Crown.*

The heads of Government departments and superior officers are not liable for the torts of their subordinates committed in carrying out the business of the Crown unless they have themselves ordered or directed the commission of the tort (*p*).

Explanation.

The head of a Government department is not the master of the Government servants belonging to the department; nor are soldiers or naval seamen the servants of the officers who command them. All are servants of the Crown, serving under a common master. Though the soldier is absolutely subject to the orders of his officer he is no more his servant in law than is a stable boy the servant of the coachman, or a railway porter the servant of the station-master or the general manager of a railway company (*q*).

(*n*) *Gwilliam* v. *Twist*, [1895] 2 Q. B. 84 [C. A.].

(*o*) *Engelhart* v. *Farrant & Co.*, [1897] 1 Q. B. 240 [C. A.].

(*p*) *Bainbridge* v. *Postmaster-General*, [1906] 1 K. B. 178 [C. A.]; *Raleigh* v. *Goschen*, [1898] 1 Ch. 73.

(*q*) *Stone* v. *Cartwright*, 6 Term Rep. 411.

Art. 30.

SECTION V.—LIABILITY FOR NEGLIGENCE OF INDEPENDENT CONTRACTORS.

ART. 30.—*The General Rule.*

(1) A principal is not liable for the collateral negligence of an independent contractor, that is, for a negligent act or omission which arises incidentally in the course of the performance of the work.

(2) But to this rule there are five exceptions :

(a) Where an independent contractor is employed to do an act unlawful in itself the principal is liable for the direct consequences of such act, and is also liable for the consequences of the agent's negligence in the course of doing the act (*r*).

(b) If the principal is under an obligation by contract or statute to do a particular thing, and he employs an independent contractor to do it, he is liable if the contractor neglects to do the thing, or does it improperly. He cannot get rid of his duty by employing an agent (*s*).

(c) Where the thing which the independent contractor is employed to do will be a nuisance, or is likely in the ordinary course of events to cause damage, unless proper precautions are taken, the principal is liable for the neglect of

(*r*) *Ellis* v. *Sheffield Gas Consumers Co.*, 2 E. & B. 767, p. 65, *post.*

(*s*) *Hole* v. *Sittingbourne and Sheerness Rail. Co.*, 6 H. & N. 488 ; *Padbury* v. *Holliday & Greenwood* (1912), 28 T. L. R. 494 ; *Hurlstone* v. *London Electric Railways* (1914), 30 T. L. R. 398.

Art. 30.

the contractor to take those precautions (*t*).

(d) Where the employer actually interferes in the contractor's work (*u*).

(e) In cases within s. 4 of the Workmen's Compensation Act, 1906, which gives servants of contractor a right to compensation from contractor's employer.

Comment on above rule.

It will be noticed that the liability of one who employs another to do work is not so extensive where the person employed is an independent contractor as it is where that other is a servant. A master has control of the servant as to the way he does his work, and it is his duty to see that the work is so done as not to cause damage to others—so he is liable for the collateral negligence of the servant. When an independent contractor is employed, the principal is only liable for acts which he has expressly or impliedly authorised. But a person who is under a duty to do something cannot evade that duty by deputing its performance to another. So if a person is under an obligation to do something and he employs an agent to do it, he is responsible for any neglect of the agent to perform that duty properly.

So, too, if a person chooses to do something which he does at his peril, or something which will be dangerous if not properly done, he must see that the person he employs to do the work does it properly. Having authorised the work, he cannot escape responsibility for its being carried out in such a manner as not to be dangerous.

Pickard v. *Smith.*

In the leading case (*v*) a railway company had let the refreshment rooms and a coal cellar to the defendant, Smith. The opening for shooting the coals into the cellar was on the arrival platform. Whilst the servants of a coal merchant (an independent contractor) were shooting coals into the cellar for Smith, the plaintiff, a passenger on

(*t*) *Hughes* v. *Percival*, 8 App. Cas. 443.

(*u*) *Burgess* v. *Gray* (1845), 1 C. B. 578.

(*v*) *Pickard* v. *Smith*, 10 C. B. (N.S.) 470; *Holliday* v. *Nat. Tel. Co.*, [1899] 2 Q. B. 392.

Art. 30.

the railway, in passing out of the station, without any fault on his part, fell into the cellar opening, which was insufficiently guarded owing to the negligence of the servants of the coal merchant. The court held that Smith was liable, although the coal merchant was an independent contractor and his servants were not Smith's servants. WILLIAMS, J., in delivering the judgment of the court, said: "Unquestionably no one can be made liable for an act or breach of duty, unless it be traceable to himself or his servant or servants in the course of his or their employment. Consequently if an independent contractor is employed to do a lawful act and in the course of the work he or his servants commit some casual act of wrong or negligence, the employer is not answerable. . . . That rule is, however, inapplicable to cases in which the act which occasions the injury is one which the contractor was employed to do; and by a parity of reasoning to cases in which the contractor is entrusted with the performance of a duty incumbent upon his employer and neglects its fulfilment whereby an injury is occasioned. Now, in the present case, the defendant employed the coal merchant to open the trap in order to put in the coals, and he trusted him to guard it whilst open and to close it when the coals were all put in. The act of opening it was the act of the employer though done through the agency of the coal merchant; and the defendant having thereby caused danger was bound to take reasonable means to prevent mischief. The performance of this duty he omitted, and the fact of his having entrusted it to a person who also neglected it furnishes no excuse, either in good sense or law" (*w*).

Illustrations. Independent contractors.

(1) A railway company was empowered by Act of Parliament to construct a railway bridge over a highway. The company employed a contractor to do the work. A servant of the contractor negligently caused the death of a person passing underneath on the highway by allowing a stone to fall on him. The contractor would no doubt have been liable for the negligence of his servant, but in an action brought by the administratrix of the deceased against the

(*w*) And see *Holliday* v. *Nat. Tel. Co.*, [1899] 2 Q. B. 392.

railway company the defendants were held not liable for the negligence of the workman, being that of an agent who was not their servant, and merely collateral to the work which he was employed to do (*x*). It would seem that liability for the acts of the independent contractor and his servants exists where the damage is caused by an act done in the performance of a dangerous undertaking under circumstances where there is a legal obligation to carry out the undertaking properly, *e.g.*, when the undertaking is to be conducted on or about a highway. Art. 30.

Illustrations of exceptions.

(2) A company, not authorised to interfere with the streets of Sheffield, directed their contractor to open trenches therein; the contractor's servants in doing so left a heap of stones, over which the plaintiff fell and was injured. Here the defendant company was held liable, as the interference with the streets was in itself an unlawful act (*y*).

(3) So where the defendants were authorised, by an Act of Parliament, to construct an opening bridge over a navigable river, a duty was cast upon them to construct it properly and efficiently; and the plaintiff having suffered loss through a defect in the construction and working of the bridge, it was held that the defendants were liable under exception (b), and could not excuse themselves by throwing the blame on their contractors (*z*).

(4) Plaintiff and defendant were owners of two adjoining houses, plaintiff being entitled to have his house supported by defendant's soil. Defendant employed a contractor to pull down his house, excavate the foundations, and rebuild the house. The contractor undertook the risk of supporting the plaintiff's house as far as might be necessary during the work, and to make good any damage and satisfy any claims arising therefrom. Plaintiff's house was injured in the progress of the work, owing to the means taken by

(*x*) *Reedie* v. *London and North Western Rail. Co.*, *Hobbit* v. *Same*, 4 Ex. 244. This decision can hardly be reconciled with that in *Holliday* v. *Nat. Tel. Co.*, [1899] 2 Q. B. 392.

(*y*) *Ellis* v. *Sheffield Gas Consumers Co.*, 23 L. J. Q. B. 42.

(*z*) See *Hole* v. *Sittingbourne and Sheerness Rail. Co.*, 6 H. & N. 488; *Hardaker* v. *Idle District Council*, [1896] 1 Q. B. 335; *The Snark*, [1899] P. 74.

Art. 30.

the contractor to support it being insufficient :—*Held*, on the principle above laid down (exception (c)), that the defendant was liable (*a*).

(5) A district council employed a contractor to make up a highway, which was used by the public but was not repairable by the inhabitants at large. In carrying out the work the contractor negligently left on the road a heap of soil unlighted and unprotected. The plaintiff, walking along the road after dark, fell over the heap and was injured. In an action against the district council and the contractor to recover damages, it was held that, as from the nature of the work danger was likely to arise to the public using the road, unless precautions were taken, the negligence of the contractor was not collateral to his employment, and the district council (as well as the contractor) were liable (*b*).

(6) Where the defendant maintained a lamp hanging over a highway for his own purposes, it was his duty to maintain it so as not to be dangerous to the public, and when he employed a contractor to repair it, but the contractor did his work badly, the defendant was liable for injury caused thereby to a person passing on the highway (*c*).

(7) Where a contractor was employed to clear and burn the bush on land belonging to the defendants, and he negligently lit a fire on the land and permitted it to spread on to the plaintiff's land, the defendants were held liable, even though the contractor in lighting the fire had disregarded the express stipulations as to the time at which the fire should be lit, on the ground that, having authorised the lighting of the fires, they were bound not only to stipulate that precautions should be taken, but to see that they were taken (*d*).

(*a*) *Bower* v. *Peate*, 1 Q. B. D. 321, approved in *Dalton* v. *Angus*, 6 App. Cas. 740 (applied in *Cory* v. *Davies*, [1923] 2 Ch. 95), and *Hughes* v. *Percival*, 8 App. Cas. 443 : *Aliter* if the work is not dangerous ; *Wilson* v. *Hodgson* (1915), 85 L. J. K. B. 270.

(*b*) *Penny* v. *Wimbledon Urban Council*, [1899] 2 Q. B. 72 [C. A.]; and see *Holliday* v. *National Telephone Co.*, [1899] 2 Q. B. 392 [C. A.].

(*c*) *Tarry* v. *Ashton*, 1 Q. B. D. 314.

(*d*) *Black* v. *Christchurch Finance Co.*, [1894] A. C. 48 [P. C.].

CHAPTER VII.

THE EFFECT OF THE DEATH OR BANKRUPTCY OF EITHER PARTY.

SECTION I.—COMMON LAW.

"Actio personalis moritur cum persona."

ART. 31.—*Death generally destroys the Right of Action.*

(1) As a general rule, the right to sue and the liability to be sued for torts ceases with the life of either party.

(2) This rule does not apply where the tort was committed **by the deceased** and consists of:

(a) The appropriation by the deceased of property (or the proceeds or value of property) belonging to the plaintiff (*a*); or

(b) An injury to real or personal property committed by the deceased within six calendar months of his death (*b*).

The rule does not apply when the death is that of **the person who would have been plaintiff** if he had lived, and the tort consists of:

(a) An injury to *real* property of the deceased, committed within six calendar months of his death (*c*); or

(*a*) *Phillips* v. *Homfray*, 24 Ch. D. 439 [C. A.] (1883), followed in *Geifel* v. *Peach*, [1917] 2 Ch. 108.

(*b*) 3 & 4 Will. 4, c. 42, s. 2; see *Kirk* v. *Todd*, 21 Ch. D. 484 [C. A.]. The action must be brought within six months of constitution of a personal representative.

(*c*) *Ibid.* The action must be brought within twelve months of death.

Art. 31.

(b) An injury to the personal property of the deceased (*d*).

NOTE.—Where the death is that of the person injured the rule "*actio personalis moritur cum personâ*" only applies to torts of a purely personal nature, such as libel and assault; it does not apply to any torts whereby the personal property of the deceased has suffered (*e*).

Illustrations.

(1) An action to restrain the infringement of a registered trade mark may be brought by the executors of the owner of the trade mark in the event of his dying before action brought, or, if brought, may be continued by his executors after his death (*f*).

(2) The case of *Hatchard* v. *Mège* (*g*) is an excellent example of the rule under consideration. There it was held that a claim for falsely and maliciously publishing a statement calculated to injure the plaintiff's right of property in a trade mark, was put an end to by the death of the plaintiff after the commencement of the action **only so far as it was a claim for libel**; but so far as the alleged tort was in the nature of slander of title, the action survived, and could be continued by his personal representative, who would be entitled to recover on proof of special damage.

ART. 32.—*Effect of Bankruptcy.*

(1) The right of action in tort belonging to one who becomes bankrupt, is not affected by his bankruptcy (*h*) unless the tort is one which causes actual loss to his estate, in which case the right passes to his trustee (*i*).

(*d*) 4 Edw. 3, c. 7; 25 Edw. 3, c. 5.
(*e*) *Twycross* v. *Grant*, 4 C. P. D. 40.
(*f*) *Oakey & Son* v. *Dalton*, 35 Ch. D. 700.
(*g*) 18 Q. B. D. 771.
(*h*) *Rose* v. *Buckett*, [1901] 2 K. B. 449.
(*i*) Bankruptcy Act, 1914; *Wilson* v. *United Counties Bank, Ltd.*, [1920] A. C. 120.

(2) A right of action for tort against one who becomes bankrupt, is not destroyed by the bankruptcy, nor can the plaintiff prove in the bankruptcy for compensation (*j*). Art. 32.

Illustrations.

(1) Thus a bankrupt may, even during the continuance of the bankruptcy, sue another for libel or assault, or for seduction of his servant (*k*) ; and may, it is conceived, keep any damages which he may recover for his own use and benefit (*l*).

(2) So in an action for trespass and seizure of goods in which the plaintiff alleged damage to the goods, damage to the premises, and personal annoyance to himself and his family, and it was admitted that no substantial damage was done to the premises or the goods, it was held that the right of action did not pass to the trustee in bankruptcy (*m*).

(3) But where a tort in respect of property causes actual damage, so as to inflict loss on the bankrupt's creditors, the right of action passes to the trustees, and the bankrupt loses the right of suing for the abstract tort to his right (*n*), unless there were two distinct causes of action (*n*).

SECTION II.—STATUTORY LIABILITY FOR CAUSING DEATH.

ART. 33.—*Actions by Personal Representatives of Persons killed by Tort.*

Fatal Accidents Act, 1846 (Lord Campbell's Act).

(1) Whenever the death of a person is caused by a wrongful act, neglect or default (*nn*) of another which would (if death had not ensued) have entitled the party injured to maintain an

(*j*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 30 (2), and s. 37 ; *Watson* v. *Holliday*, 20 Ch. D. 780; 52 L. J. Ch. 543; *Ex parte Stone, Re Giles*, 37 W. R. 767.

(*k*) *Beckham* v. *Drake*, 2 H. L. Cas. 579.

(*l*) *Ex parte Vine*, 8 Ch. D. 364 [C. A.].

(*m*) *Rose* v. *Buckett*, [1901] 2 K. B. 449.

(*n*) *Brewer* v. *Dew*, 11 M. & W. 625; and *Hodgson* v. *Sidney*, L. R. 1 Ex. 313 ; Bankruptcy Act, 1914, s. 18 (1).

(*nn*) *Mersey Docks and Harbour Board* v. *Procter*, [1923] A. C. 253 ; there must be a duty and breach.

Art. 33.

action in respect thereof, then the wrongdoer is liable to an action, even although the circumstances amount in law to a felony (*o*).

(2) Every such action must be for the benefit of the wife, husband, parent and child of the deceased, and must be brought by and in the name of the executor or administrator of the deceased person (*p*).

(3) Where there is no personal representative, or no action is brought by him within six months, the action may be brought in the name or names of all or any of the persons for whose benefit the personal representative could have sued (*q*).

(4) In every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought. The damages recoverable are not limited to such sum as the deceased contracted should be the defendant's limit of liability, but the right to damages under ss. 1 and 2 of the Act arises wherever the deceased at death had a right to claim *some* damages (*qq*). The amount so recovered, after deducting the costs not recovered from the defendant, is divided amongst the before-mentioned parties (or such of them as may be in existence) in such shares as the jury by their verdict may direct (*r*).

(*o*) Fatal Accidents Act, 1846 (usually called Lord Campbell's Act) (9 & 10 Vict. c. 93), s. 1.

(*p*) *Ibid.*, s. 2.

(*q*) 27 & 28 Vict. c. 95, s. 1; and see *Holleran* v. *Bagnell*, 4 L. R. Ir. 740.

(*qq*) *Nunan* v. *Southern Rail.*, [1924] 1 K. B. 223 [C. A.].

(*r*) 9 & 10 Vict. c. 93, s. 2.

(5) Not more than one action lies for the same cause of complaint, and every such action must be commenced within one year after the death of the deceased (*s*). Art. 33.

Explanation.

At common law no action lay against any person who by his wrongful act, neglect, or default caused the immediate death of another person, even though damage was thereby directly caused to others by being deprived of his services or support. Still less could his personal representatives bring an action in respect of the wrong committed to the deceased himself. And this is still the law, except in so far as an action lies under Lord Campbell's Act. So a master cannot bring an action for injuries which cause the immediate death of his servant, though he suffers loss by being deprived of those services, nor can a father recover in respect of the funeral expenses incurred by reason of the death of his daughter caused by the negligence of the defendant (*t*).

Points to be noted.

The following points must be remembered—

(1) No action lies unless, had the deceased lived, he himself could have maintained an action at the time of his death (*tt*). So it is a good defence that the deceased would have had no cause of action as his injuries were caused by his contributory negligence (*u*). So, too, if the deceased's cause of action would at the time of his death have been barred by a Statute of Limitations (*x*), or by his having accepted satisfaction for his injuries (*y*), or agreed not to sue (*z*), no action can be brought under the Act.

(*s*) 9 & 10 Vict. c. 93, s. 4.

(*t*) *Clark* v. *London General Omnibus Co.*, [1906] 2 K. B. 648 [C. A.]. But the rule does not apply where the cause of action is *breach of contract* and the death was part of the damages (*Jackson* v. *Watson & Sons*, [1909] 2 K. B. 193). It has been held that where by the negligence of the defendant a servant is *injured* but not killed, the master may bring an action for loss of services, *sed quære* (*Berringer* v. *Great Eastern Rail. Co.*, 4 C. P. D. 163).

(*tt*) *British Electric Rail. Co.* v. *Gentile*, [1914] A. C. 1034; *Nunan* v. *Southern Rail.*, [1924] 1 K. B. at p. 229, *per* ATKIN, L.J.

(*u*) *Pym* v. *Great Northern Rail. Co.*, 4 B. & S. 396 [Ex. Ch.].

(*x*) *Williams* v. *Mersey Dock Board*, [1905] 1 K. B. 804 [C. A.].

(*y*) *Read* v. *Great Eastern Rail. Co.*, L. R. 3 Q. B. 555.

(*z*) *Griffiths* v. *Earl of Dudley*, 9 Q. B. D. 357.

Art. 33.

(2) Every such action must be brought for the benefit of the wife, husband, parent and child of the deceased. **Parent** includes a grand-parent and a step-parent. **Child** includes a grand-child and a step-child, and a child *en ventre sa mère* (*a*), but not an illegitimate child (*b*). The jury apportion the damage amongst these persons in such shares as they may think proper.

Basis of compensation.

(3) The basis of compensation is not a solatium for injured feelings, but damages for a pecuniary loss actual or prospective. The test is, was there a reasonable probability of pecuniary advantage, from the continuance of the life of the deceased, as opposed to a mere speculative possibility of benefit (*f*)? Where a father employed his son, who was a skilled workman, at the current rate of wages, and the son did not contribute to the father's support, it was held that the father had no claim, as he had suffered no pecuniary loss by the death of his son (*g*).

(4) But "where a man has no means of his own and earns nothing, his wife or children cannot be pecuniary losers by his decease. In the like manner when by his death the whole estate from which he derived his income passes to his widow or to his child (as was the case in *Pym* v. *Great Northern Rail. Co.* (*h*)), no statutory claim will lie at their instance" (*i*). So, too, the jury cannot, in such cases, take into consideration the grief, mourning, and funeral expenses to which the survivors were put. And this seems reasonable; for, in the ordinary course of nature, the deceased would have died sooner or later, and the grief,

(*a*) *The George and Richard*, L. R. 3 A. P. & E. 466; 24 L. T. 717.

(*b*) *Dickinson* v. *North Eastern Rail. Co.*, 2 H. & C. 735.

(*f*) *Taff Vale Rail. Co.* v. *Jenkins*, [1913] A. C. 1; *Ryan* v. *Oceanic Steam Navigation Co.*, [1914] 3 K. B. 731; *Barnet* v. *Cohen*, [1921] 2 K. B. 461; *Royal Trust Co.* v. *C. P. R.* (1922), 38 T. L. R. 899 [P. C.].

(*g*) And damages have been awarded for the loss of domestic services of a wife (*Berry* v. *Humm*, [1915] 1 K. B. 627), and for loss of anticipated earnings of a daughter (*Taff Vale Rail. Co.* v. *Jenkins*, *supra*).

(*h*) 2 B. & S. 759 [Ex. Ch.].

(*i*) *Per* Lord WATSON in *Grand Trunk Rail. Co. of Canada* v. *Jennings*, 13 App. Cas. 800, 804.

mourning, and funeral expenses would have had to be borne then, if not at the time they were borne (*k*).

Insurance not to be taken into account.

(5) It was formerly held that where the deceased had insured his life the jury in assessing damages ought to take into account the value of the policy payable on his death in diminution of damages. This is now, however, altered by the **Fatal Accidents Act, 1908** (*m*), by which the rule under Lord Campbell's Act is made the same as in common-law actions for damages (*n*), and "*any sum paid or payable on the death of the deceased under any contract of assurance or insurance*" *is not to be taken into account.*

(*k*) *Blake* v. *Midland Rail. Co.*, 18 Q. B. 93; *Dalton* v. *South Eastern Rail. Co.*, 4 C. B. (N.S.) 296; *Clark* v. *London General Omnibus Co.*, [1906] 2 K. B. 648 [C. A.].

(*m*) 8 Edw. 7, c. 7.

(*n*) See Art. 40, *post*.

CHAPTER VIII.

OF DAMAGES IN ACTIONS FOR TORT.

ART. 34.—*Damages for Personal Injury.*

THERE is no fixed rule for estimating damages in cases of injury to the person, reputation, or feelings, and the finding of the jury will only be disturbed—

(a) Where the amount of the damages awarded is so excessive that no twelve men could reasonably have given it (*a*) ;

(b) Where the court comes to the conclusion from the amount or other circumstances that the jury must have taken into consideration matters which they ought not to have considered, or applied a wrong measure of damages (*b*) ;

(c) Where the smallness of the award shows that they have either failed to take into consideration some essential element (*c*), or have compromised the question (*d*).

Comment.

The court will not interfere with the verdict of a jury merely on the ground that the damages awarded (*e*) are more than the court itself would have awarded. The court must be satisfied that the jury has not really acted

(*a*) *Praed* v. *Graham*, 24 Q. B. D. 53.

(*b*) *Johnston* v. *Great Western Rail. Co.*, [1904] 2 K. B. 250 [C. A.]; *Banbury* v. *Bank of Montreal*, [1918] A. C. 626.

(*c*) *Phillips* v. *London and South Western Rail. Co.*, 4 Q. B. D. 406.

(*d*) *Falvey* v. *Stanford*, L. R. 10 Q. B. 54 ; *Karavias* v. *Callinicos*, [1917] W. N. 323.

(*e*) *Britton* v. *South Wales Rail. Co.*, 27 L. J. Ex. 355.

Art. 34.

reasonably on the evidence, but has been misled by prejudice or passion, or has acted on a wrong principle (*f*). The only power of the court, if they think the damages excessive, is to send the case down for a new trial. They cannot (except by consent) usurp the functions of a jury, and themselves assess the damages (*g*).

So, in an action for false imprisonment, libel, or malicious prosecution, the jury may take into account the injured feelings and reputation of the plaintiff, and not merely his pecuniary loss.

Assault.

Thus, to beat a man publicly is a greater insult and injury than to do so in private, and is accordingly ground for aggravation of damages (*h*).

And where damage which is not actionable is combined with damage which results from an actionable wrong, the former damage may be taken into consideration to swell the damages awarded on the actionable wrong (*i*).

ART. 35.—*Damages for Injury to Property.*

(1) The damages in respect of injuries to property are to be estimated upon the basis of being compensatory for the deterioration in value caused by the wrongful act of the defendant, and for all natural and necessary expenses incurred by reason of such act (*j*).

(2) In actions for trespass to real property the measure of damages is the loss the plaintiff has sustained in consequence of the wrongful acts of the defendant, and not the benefit which accrues to the latter.

(*f*) *Per* Lord HALSBURY, L.C., in *Watt* v. *Watt*, [1905] A. C. 115; *Johnston* v. *Great Western Rail. Co.*, [1904] 2 K. B. 250 [C. A.].

(*g*) *Watt* v. *Watt*, [1905] A. C. 115.

(*h*) *Tullidge* v. *Wade*, 3 Wils. 18.

(*i*) *Jackson* v. *Watson & Sons*, [1909] 2 K. B. 193.

(*j*) See *Rust* v. *Victoria Dock Co.*, 36 Ch. D. 113 [C. A.], applied in *Granby (Marquis)* v. *Bakewell Urban Council*, [1923] 21 L. G. R. 329.

(3) When the wrong consists in depriving the plaintiff of his personal property the measure of damages is the market value of the property at the time of the commission of the wrong. Art. 35.

(4) Where the wrong results in the plaintiff's being temporarily deprived of the use of personal property the measure of damages is the value of the use of which he is deprived.

(1) Thus, for the conversion of chattels, the full market value of the chattel at the date of the conversion is, in the absence of special damage, the true measure. Where the conversion consists in a refusal to deliver them up to the person entitled to them, the value at the time of the refusal is the measure of damages (*k*). Conversion.

If there is no market value, the actual value must be ascertained otherwise (*l*).

(2) Where the defendant cut a ditch across the plaintiff's land, the measure of damages was the diminution in value of the land, and not the cost of restoring it (*m*). Trespass to land.

(3) In *Whitwham* v. *Westminster Brymbo Coal and Coke Co.* (*n*), another principle was applied in peculiar circumstances. The defendants had wrongfully tipped on the plaintiff's land spoil from a colliery, and it was held that in the special circumstances the value of the land to *the defendants* for tipping purposes was the proper measure, as the defendants had had the use of the plaintiff's land for years, and they ought not to do this without paying for it.

(4) So, where coal has been taken, by working into the mine of an adjoining owner, the trespasser will be treated as the purchaser at the pit's mouth, and must pay the market value of the coal at the pit's mouth, less the actual Taking coal.

(*k*) *Henderson & Co.* v. *Williams*, [1895] 1 Q. B. 521 [C. A.].
(*l*) *France* v. *Gaudet*, L. R. 6 Q. B. 199.
(*m*) *Jones* v. *Gooday*, 8 M. & W. 146.
(*n*) [1896] 2 Ch. 538; and see *Lodge Holes Colliery Co.* v. *Wednesbury Corporation*, [1908] A. C. 323.

Art. 35.

disbursements (not including any profit or trade allowances) for severing and bringing it to bank, so as to place the owner in the same position as if he had himself severed and raised the coal (*o*).

Loss of use of a ship.

Freight-earning.

(5) Where, owing to a collision, the plaintiffs lost the use of a freight-earning ship which was damaged by collision and in consequence detained for seven days, while repairs were executed, upon which days no freight was earned, although the amount paid by the charterers of the ship for hire and working expenses was greater than the amount she would have earned over and above expenses of working her, yet the true measure of damage sustained was held to be the amount of freight she would have earned (if the vessel had been available for freight earning), together with the working expenses of that period (*p*). And where a harbour board lost the use of a lightship by reason of its being damaged by collision, they recovered not only the cost of the repairs, but a sum for the loss of the use of the lightship, although its place was taken by a spare lightship they kept in reserve (*q*).

Non-freight-earning.

Duty to mitigate loss.

(6) It is the duty of the plaintiff to use all reasonable means to mitigate his loss, and the measure of damage is the loss actually incurred (*s*). at the date of breach

ART. 36.—*Presumption of Damage against a Wrong-doer.*

If a person who has wrongfully converted property refuses to produce it, it will be presumed as against him to be of the best description (*t*).

(*o*) *In re United Merthyr Collieries Co.*, L. R. 15 Eq. 46 [C. A.].

(*p*) *The Valeria*, [1922] 1 A. C. 449, following *The Argentino* (1889), 14 App. Cas. 519; cf. *The Bodlewell*, [1907] P. 286.

(*q*) *The Mediana*, [1900] A. C. 113.

(*s*) *British Westinghouse Co.* v. *Underground Electric Rails.*, [1912] A. C., at p. 689; cf. this with the judgment of Lord Wrenbury in *Jamal* v. *Moolla Dawood & Co.*, [1916] 1 A. C., at p. 179; applied in *Keck* v. *Faber* (1916), 60 Sol. Jo. 253.

(*t*) *Armory* v. *Delamirie*, 1 Str. 504; 1 Sm. L. C. 356.

Art. 36.
Illustrations.

(1) Thus, in the leading case (*tt*), where a jeweller who had wrongfully converted a jewel which had been shown to him, and had returned the socket only, refused to produce it in order that its value might be ascertained, the jury were directed to assess the damages on the presumption that the jewel was of the finest water, and of a size to fit the socket; for *Omnia præsumuntur contra spoliatorem.*

(2) So, where a diamond necklace was taken away, and part of it traced to the defendant, it was held that the jury might infer that the whole thing had come into his hands (*u*).

ART. 37.—*Consequential Damages.*

Where damage has resulted from the tortious act it may be recovered: but when the question arises of how far the plaintiff can trace results from the tortious act it is submitted that he must show that any particular damage he says is a result of the tortious act flows directly from that act and is not attributable to other causes (*uu*). The necessity for proving the direct flow of the injury complained of from the tortious act is well illustrated in cases of damages claimed for injury caused by mental shock which results from the tortious act (*v*).

Illustration.
Loss of earnings.

If, through a person's wilful or negligent conduct, corporal injury is inflicted on another, whereby he is partially or totally prevented from attending to his business, the pecuniary loss suffered in consequence may be recovered, for it flows directly from the tort (*w*).

(*tt*) *Armory* v. *Delamirie*, 1 Str. 504; 1 Sm. L. C. 356.
(*u*) *Mortimer* v. *Cradock*, 12 L. J. C. P. 166.
(*uu*) *The Paludina*, [1925] P. 40 [C. A.].
(*v*) See Article 5, and note (*w*), *infra*.
(*w*) *Re Polemis and Furness, Withy & Co.*, [1921] 3 K. B. 560 [C. A.]; *Janvier* v. *Sweeney*, [1919] 2 K. B. 316.

Art. 38.

ART. 38.—*Prospective Damages.*

The damages awarded must include the probable future injury which will result to the plaintiff from the defendant's tort, because more than one action will not lie on the same cause of action.

Illustrations. Bodily injuries.

(1) So, when a young man of twenty-eight, who had been trained as a marine engineer, and intended to follow this profession but had not obtained a post, and was working for his father at a salary of £3 a week, was injured in a railway accident, it was held that £3,000 damages were not excessive. The salary which he would have been probably able to earn was £500 a year, and his physical condition prevented him from earning it. £3,000 represented his prospective loss from this cause (*d*).

Injury to trade.

(2) So, in estimating the damages in an action for libelling a tradesman, the jury should take into consideration the prospective injury which will probably happen to his trade in consequence of the defamation (*e*).

Damage to property and person distinct torts.

(3) But where the same wrongful act causes damage to goods, and also damage to the person, it has been held that there were two distinct causes of action, for which separate proceedings might be prosecuted (*f*).

Continuing torts.

(4) And if the tort be a continuing tort, the principle does not apply; for in that case a fresh cause of action arises *de die in diem*. Thus, in a continuing trespass or nuisance, if the defendant does not cease to commit the trespass or nuisance after the first action, he may be sued until he does. Whether, however, there *is* a continuing *tort*, or merely a continuing **damage,** is often a matter of difficulty to determine.

(*d*) *Johnston* v. *Great Western Rail. Co.*, [1904] 2 K. B. 250 [C. A.].

(*e*) *Gregory* v. *Williams*, 1 C. & K. 568.

(*f*) *Brunsden* v. *Humphrey*, 14 Q. B. D. 141 [C. A.].

Art. 38.

Successive subsidences caused by one act of defendant.

(5) In the recent case of *Darley Main Colliery Co.* v. *Mitchell* (*g*) the appellants worked their mines too close to the respondent's property, and in consequence some cottages of the respondent were injured in 1868, and were repaired by the appellants. In 1882, in consequence **of the same workings which caused the damage of 1868,** a further subsidence took place, and the respondent's cottages were again injured. The case turned on the question of whether the respondent was barred by the Statute of Limitations, but incidentally it was decided that the tort was not the excavation, but the causing the respondent's land to subside. The excavation was no doubt the cause of the subsidence, but the tort itself was damage resulting from the infringement of the respondent's right of support, and consequently each separate subsidence was a distinct and separate cause of action for which a new action would lie.

ART. 39.—*Aggravation and Mitigation.*

The jury may look into all the circumstances, and at the conduct of both parties, down to the time their verdict is given (*gg*), and see where the blame is, and what ought to be the compensation according to the way the parties have conducted themselves (*h*).

Illustrations.

Seduction under guise of courtship.

(1) In seduction, if the defendant had committed the offence under the guise of honourable courtship, that is ground for aggravating the damages; not, however, on account of the breach of contract, for that is a separate offence, and against a different person. "The jury did right, in a case where it was proved that the seducer had made his advances under the guise of matrimony, in giving liberal damages; and if the party seduced brings an action for breach of promise of marriage, so much the

(*g*) 11 App. Cas. 127; applied in *West Leigh Colliery Co.* v. *Tunnicliffe & Hampson*, [1908] A. C. 27.

(*gg*) *Praed* v. *Graham* (1889), 24 Q. B. D. 53 [C. A.].

(*h*) *Davis* v. *London and North Western Rail. Co.*, 7 W. R. 105.

Art. 39.

better. If much greater damages had been given, we should not have been dissatisfied therewith, the plaintiff having received this insult in his own house, where he had civilly treated the defendant, and permitted him to pay his addresses to his daughter" (*i*).

Character of girl seduced.

(2) On the other hand, the previous loose or immoral character of the party seduced is ground for mitigation. The using of immodest language, for instance, or submitting herself to the defendant under circumstances of extreme indelicacy (*j*).

Plea of truth in defamation.

(3) In actions for defamation, a plea of truth is matter of aggravation unless proved, and may be taken into consideration by the jury in estimating the damages (*k*).

Plaintiff's bad character in defamation.

(4) Evidence of the plaintiff's *general bad character* is allowed in mitigation of damages in cases of defamation. But although evidence of general reputation of bad character is admissible, evidence of rumours and suspicions before the publication of the libel that the plaintiff had done what was charged in it, or of facts showing the misconduct of the plaintiff, is not admissible (*l*).

Insolent trespass.

(5) Where a person trespassed upon the plaintiff's land, and defied him, and was otherwise very insolent, and the jury returned a verdict for £500 damages, the court refused to interfere. GIBBS, C.J., saying: "Suppose a gentleman had a paved walk before his window, and a man intrudes, and walks up and down before the window, and remains there after he has been told to go away, and looks in while the owner is at dinner, is the trespasser to be permitted to say, 'Here is a halfpenny for you, which is the full extent of all the mischief I have done'? Would that be a compensation? I cannot say that it would be." And HEATH, J., said: "I remember a case where a jury gave £500 damages for merely knocking a man's hat off; and the court refused a new trial" (*m*).

(*i*) *Per* WILMOT, C.J., in *Tullidge* v. *Wade*, 3 Wils. 18.

(*j*) See *Verry* v. *Watkins*, 7 C. & P. 308.

(*k*) *Warwick* v. *Foulkes*, 12 M. & W. 507.

(*l*) See *Scott* v. *Sampson*, 8 Q. B. D. 491, and *Wood* v. *Durham* (*Earl*), 21 Q. B. D. 501; and as to giving particulars, see R. S. C., Order XXXVI., r. 37.

(*m*) *Merest* v. *Harvey*, 5 Taunt. 442.

ART. 40.—*Insurance not to be taken into Account.* Art. 40.

In assessing damages whether for personal injuries or for injuries to property the jury ought not to take into account any sum which may be paid or payable to the plaintiff under any policy of insurance (*n*).

NOTE.—So where a plaintiff sued for damages for personal injuries received in a railway accident, and the jury found as damages £217, and it appeared that the plaintiff was entitled to receive £31 on an accident policy, it was held that the sum awarded by the jury ought *not* to be reduced by the sum of £31. If it were otherwise, the defendant would get the benefit of the plaintiff having insured, and in some cases might have to pay nothing. Insurance is a matter between the insurer and the assured, and ought not to affect the liability of the wrongdoer to pay in full the damages caused by his tort (*n*).

(*n*) *Bradburn* v. *Great Western Rail. Co.*, L. R. 10 Ex. 1, and see *Yates* v. *Whyte*, 4 Bing. N. C. 272, and in cases of death the same rule is applied by the Fatal Accidents Act, 1908.

CHAPTER IX.

OF INJUNCTIONS TO PREVENT THE CONTINUANCE OF TORTS.

Definition

An injunction is an order of a court (*a*) restraining the commission or continuance of some act (*b*).

An injunction may be granted in all cases in which it shall appear to the court just and convenient that such order shall be made (*bb*).

Interlocutory.

Injunctions are either interlocutory or perpetual. An interlocutory injunction is a temporary injunction, granted summarily on motion (*c*) founded on an affidavit, and before the facts in issue have been formally tried and determined. Such an injunction is granted *ex parte* to restrain the commission or continuance of some act until the court has decided whether a perpetual injunction ought to be granted. A perpetual injunction is one which is granted after the facts in issue have been tried and determined, and is given by way of final relief.

Perpetual.

Mandatory

A mandatory injunction is one granted to compel the performance of a positive act, *e.g.* the removal of work already executed (*cc*).

(*a*) A county court has now, in actions within its jurisdiction, power to grant an injunction against a nuisance, and to commit to prison for disobedience thereof (*Ex parte Martin*, 4 Q. B. D. 212; affirmed *sub nom. Martin* v. *Bannister*, *ibid.* 491 [C. A.]). See also *R.* v. *Cheshire County Court Judge*, [1921] 2 K. B. 694 [C. A.]; *Simpson* v. *Crowle*, [1921] 3 K. B. 243; and *Davey* v. *Robinson*, [1923] 1 K. B. 563 [C. A.].

(*b*) As to mandatory injunctions, and as to the general principles guiding the courts in granting or refusing injunctions, see Strahan's Digest of Equity, 4th ed., pp. 473–479; and Kerr on Injunctions, 5th ed.; *Andrews* v. *Waite*, [1907] 2 Ch. 510.

(*bb*) Judicature Act, 1873, s. 25 (8).

(*c*) In the King's Bench Division applications for interlocutory injunctions are made by summons in chambers; *Daniel* v. *Ferguson*, [1891] 2 Ch. 27 [C. A.].

(*cc*) *Sharp* v. *Harrison*, [1922] 1 Ch. 502.

Since the Judicature Acts each Division of the High Court has full power, apart from Lord Cairns' Act, to give either an injunction or damages (*ccc*).

ART. 41.—*Injuries Remediable by Injunction.*

(1) Wherever a legal right, whether in regard to property or person, exists, a violation of that right will be prohibited in all cases where the injury is such as is not susceptible of being adequately compensated by damages, or at least not without the necessity of a multiplicity of actions for that purpose (*d*).

Damages instead of injunction.

(2) The court has jurisdiction to give damages instead of granting an injunction, and will generally do so in cases where there are found in combination the four following requirements, viz., where the injury to the plaintiff's legal rights (1) is small, (2) is capable of being estimated in money, (3) can be adequately compensated by a small money payment, and (4) where the case is one in which it would be oppressive to the defendant to grant an injunction (*e*).

Interlocutory injunctions.

(3) To entitle a plaintiff to an interlocutory injunction, the court must be satisfied that there is a serious question to be tried at the hearing, and that, on the facts before it, there is a probability that the plaintiff is entitled to relief (*f*).

(*ccc*) *Sayers* v. *Collyer* (1884), 28 Ch. D. 103 [C. A.].

(*d*) *Imperial Gas Light & Coke Co. Directors* v. *Broadbent*, 7 H. L. Cas. 600.

(*e*) *Per* BAGGALLAY, L.J., in *Sayers* v. *Collyer*, 28 Ch. D. 103 [C. A.], at p. 108; *Serrao* v. *Noel*, 15 Q. B. D. 549 [C. A.]; and *per* A. L. SMITH, L.J., in *Shelfer* v. *City of London Electric Lighting Co., Meux's Brewery Co.* v. *City of London Electric Co.*, [1895] 1 Ch. 287 [C. A.], at p. 322, considered in *Sharp* v. *Harrison*, *supra*.

(*f*) *Per* COTTON, L.J., *Preston* v. *Luck*, 27 Ch. D. 497 [C. A.], at p. 506.

Art. 41.

And that, unless an interlocutory injunction is granted, it will become very difficult or impossible to do complete justice at a later stage (*g*).

Quia Timet.

(4) The court may award damages in lieu of an injunction in cases in which an injury is threatened but not yet actually done at the time of the application (*gg*).

To restrain publication of libel.

(5) An interlocutory injunction will be granted to restrain the publication of a libel, even though such libel affects the plaintiff in his character only, and not in his business. But an injunction to restrain the publication of a libel will only be granted in the clearest cases (*h*). And not where the libel, however unjustifiable, does not threaten immediate injury to the plaintiff (*i*).

Illustrations. Nuisances.

(1) Thus, where substantial damages would be, or have been, recovered for injury done to land, or the herbage thereon, by smoke or noxious fumes, an injunction will be granted to prevent the continuance of the nuisance; for otherwise the plaintiff would have to bring continual actions (*j*).

(2) And so where a railway company, for the purpose of constructing their works, erected a mortar mill on part of their land close to the plaintiff's place of business, so as to cause great injury and annoyance to him by the noise and vibration, it was held that he was entitled to an

(*g*) *Mogul SS. Co.* v. *McGregor, Gow & Co.* (1885), 15 Q. B. D. 476.

(*gg*) *Leeds Industrial Co-operative Society* v. *Slack*, [1924] A. C. 851.

(*h*) *Bonnard* v. *Perryman*, [1891] 2 Ch. 269 [C. A.]; *Monson* v. *Tussaud's, Limited, Monson* v. *Louis Tussaud*, [1894] 1 Q. B. 671 [C. A.].

(*i*) *Salomons* v. *Knight*, [1891] 2 Ch. 294 [C. A.].

(*j*) *Tipping* v. *St. Helen's Smelting Co.*, L. R. 1 Ch. 66; similarly in the case of a fried fish shop, *Adams* v. *Ursell*, [1913] 1 Ch. 269; *Stearn* v. *Prentice Bros., Ltd.*, [1919] 1 K. B. 394.

Art. 41.

injunction to restrain the company from continuing the annoyance (*k*).

(3) As the atmosphere cannot rightfully be infected with noxious smells or exhalations, so it should not be caused to vibrate in a way that will wound the sense of hearing. Noise caused by the ringing of bells, if sufficient to annoy and disturb residents in the neighbourhood in their homes or occupations, is a nuisance, and will be restrained (*l*).

Interference with light.

(4) So, where one has gained a *right* to the free access of light to his house, and buildings are erected which cause a substantial privation of light sufficient to render the occupation of the house uncomfortable, according to the ordinary notions of mankind, and to prevent the plaintiff from carrying on his business on the premises as beneficially as before, an injunction will be granted in cases in which damages do not afford an adequate remedy (*m*).

Impossibility of compliance.

(5) An injunction will not be granted against a local authority who are committing a nuisance by sewage pollution when it is legally impossible for the authority to obey the terms of the injunction because they have no power to stop up their sewers or prevent persons from using them, or when it is physically impossible. In such cases damages will be given instead (*n*).

Libel.

(6) It was formerly held that an injunction could not be granted to restrain the publication of a personal libel, even where it injuriously affected property (*o*). However, since the Judicature Act, 1873, the court has power to grant an injunction whenever it may appear to be just or convenient (s. 25 (8)). For some time the court was inclined to restrict this power to cases where a libel prejudicially

(*k*) *Fenwick* v. *East London Rail. Co.*, 20 Eq. 544; but see *Harrison* v. *Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409, in which the former case was distinguished.

(*l*) *Soltau* v. *De Held*, 2 Sim. (N.S.) 133. Note these were not bells of an Established church.

(*m*) *Colls* v. *Home and Colonial Stores*, [1904] A. C. 179; *Andrews* v. *Waite*, [1907] 2 Ch. 500.

(*n*) *Att.-Gen.* v. *Dorking Union*, 20 Ch. D. 595 [C. A.]; *Earl of Harrington* v. *Derby Corporation*, [1905] 1 Ch. 205.

(*o*) *Gee* v. *Pritchard*, 2 Swan. 402; *Clark* v. *Freeman*, 11 Beav. 112; *Prudential Assurance Co.* v. *Knott*, 10 Ch. App. 142.

affected property (*p*); but it may now be considered settled that the court **has jurisdiction** to grant injunctions to restrain the publication of all libels (*q*); or even oral slanders (*r*). However, the court is extremely chary of granting **interlocutory** injunctions in cases of libel. As Lord ESHER, M.R., said in *Coulson & Sons* v. *Coulson & Co.* (*s*): "To justify the court in granting an interim injunction, it must come to a decision upon the question of libel or no libel, before the jury have decided whether it was a libel or not. Therefore the jurisdiction was of a delicate nature. *It ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous, and where, if the jury did not so find, the court would set aside the verdict as unreasonable.*"

Art. 41.

Slander.

ART. 42.—*Public Convenience does not justify the continuance of a Tort.*

It is no ground for refusing an injunction that it will, if granted, do an injury to the public. But although an injunction is granted its operation may be suspended, where it would work an injury to the defendant far outweighing the benefit to the plaintiff, to enable the defendant to provide for the new circumstances (*t*).

Illustrations.

(1) Thus, in the case of *Att.-Gen.* v. *Birmingham Borough Council* (*u*), where the defendants had poured their sewage into a river, and so rendered its water unfit for drinking and incapable of supporting fish, it was held that the legislature not having given them express powers to send their sewage into the river, their claim to do so, on the ground that the

(*p*) *Thorley's Cattle Food Co.* v. *Massam*, 14 Ch. D. 763 [C. A.].

(*q*) See *per* COLERIDGE, L.C.J., in *Bonnard* v. *Perryman*, [1891] 2 Ch. 269 [C. A.], at p. 283.

(*r*) *Hermann Loog* v. *Bean*, 26 Ch. D. 306 [C. A.].

(*s*) 3 T. L. R. 846 [C. A.], followed in *Collard* v. *Marshall*, [1892] 1 Ch. 578.

(*t*) *Stollmeyer* v. *Trinidad Lake Petroleum Co.*, [1918] A. C. 485.

(*u*) 4 K. & J. 528. But cf. Illust. (5), p. 88, *supra*.

Art. 42.

population of Birmingham would be injured if they were restrained from carrying on their operations, was untenable.

(2) And where a railway company was forbidden by statute to run trains across a level crossing at a greater speed than four miles an hour, it was held that they must be restrained by injunction, at the suit of the Attorney-General, from running trains at a greater speed than four miles an hour, and that the court could not entertain the question whether the infringement of the statute caused any inconvenience to the public (*v*).

(*v*) *Att.-Gen.* v. *London and North Western Rail. Co.*, [1900] 1 Q. B. 78 [C. A.].

CHAPTER X.

OF THE LIMITATION OF ACTIONS FOR TORT.

SECTION 1.—THE STATUTES OF LIMITATIONS.

ART. 43.—*The Principal Periods of Limitation.*

EVERY action for tort must be brought within **six years** from the time when the cause of action is complete (*a*), except—

(a) Trespass to the person by assault or false imprisonment—within **four years** (*b*).

(b) Slander by words actionable *per se*—within **two years**; otherwise, on proof of special damage, within **six years** (*c*).

(c) Actions under Lord Campbell's Act—within **one year** from the death of the deceased (*d*).

(d) Actions under the Employers' Liability Act—within **six months**, or (if injured person be killed) within **one year** of the death (*e*).

(e) Actions for recovery of land—within **twelve years** (*f*).

(f) Against persons protected by the Public Authorities Protection Act, 1893, within

(*a*) Limitation Act, 1623 (21 Jac. 1, c. 16), s. 3.
(*b*) *Ibid.*
(*c*) *Ibid.*
(*d*) Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93). See Art. 33.
(*e*) Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 4. See Art. 94.
(*f*) See Arts. 134 and 135, where the rule is more fully stated.

Art. 43.

six months of the act or default complained of (*ff*).

(g) Actions for statutory penalties—within **two years** (*g*).

(h) Actions for damage by collision at sea —within **two years** (*h*).

(i) Infringement of copyright—within **three years** (*i*).

Conflicts in Limitation.

(1) The Limitation of two years in the Maritime Conventions Act, 1911, prevails over that in the Fatal Accidents Act, 1846 (*ii*).

(2) The limitation of six months in the Public Authorities Protection Act, 1893, prevails over that in the Maritime Conventions Act, 1911 (*h*).

(3) The limitation of time in the Workmen's Compensation Act, 1906, section 2 (1), prevails over that in the Public Authorities Protection Act, 1893 (*ff*).

ART. 44.—*Commencement of Period.*

(1) If the cause of action is the doing of a thing, the action must be brought within the prescribed period after the actual doing of the thing complained of.

(2) But if the cause of action is not the doing of something but the damage resulting therefrom, the period of limitation is to be computed from the time when the party sustained the damage (*j*).

(3) And where a tort has been fraudulently

(*ff*) This limitation does not apply to the Workmen's Compensation Act, 1906; *Tuckwood* v. *Rotherham Corpn.*, [1921] 1 K. B. 526 [C. A.].

(*g*) Civil Procedure Act, 1833.

(*h*) Maritime Conventions Act, 1911, s. 8; but this does not override the Public Authorities Protection Act, 1893, (*The Danube II.*, [1921] P. 183 [C. A.]).

(*i*) Copyright Act, 1911, s. 10.

(*ii*) *The Caliph*, [1912] P. 213; *The Espagnoleto* [1920], P. 223.

(*j*) *Backhouse* v. *Bonomi*, 9 H. L. Cas. 503; *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Cas. 127.

concealed by the defendant, and the plaintiff has had no reasonable means of discovering it, the statute only runs from the date of the discovery (*k*). Art. 44.

(4) Where the cause of action is complete but there is no one in existence able to bring the action, or no defendant capable of being sued, time does not run until this bar is removed, but no bar arising *after* the cause of action becomes available has any effect in suspending the operation of the statute (*l*).

(5) Where at the time the cause of action arises the plaintiff is a lunatic, or a minor, or the defendant is outside the United Kingdom, the period does not begin to run until this disability ceases (*l*).

Explanation

The meaning of this rule is, that where the tort is the wrongful infringement of a right, the period of limitation runs immediately from the date of the infringement. But, on the other hand, where the tort consists in the violation of a duty coupled with actual resulting damage, then, as the breach of duty is not of itself a tort, so the period of limitation does not commence to run until it becomes a tort by reason of the actual damage resulting from it.

Concealed fraud.

The doctrine of " concealed fraud " is an equitable doctrine. It only applies where the tort has been fraudulently concealed **by the person setting up the statute,** or by someone through whom he claims. It would be inequitable to allow a person to take advantage of his own fraud by pleading the statute when that fraud had taken from the plaintiff the chance of bringing his action earlier (*m*).

Illustrations.

(1) Where A. owned houses built upon land contiguous to land of B., C., and D. ; and E., being the owner of the

Taking away lateral support.

(*k*) *Gibbs* v. *Guild*, 9 Q. B. D. 59 ; *Bulli Coal Mining Co.* v. *Osborne*, [1899] A. C. 351 [P. C.] ; *Oelkers* v. *Ellis*, [1914] 2 K. B. 139.

(*l*) *Rhodes* v. *Smethurst* (1840), 6 M. & W. 351.

(*m*) See *Thorne* v. *Heard*, [1894] 1 Ch. 599 [C. A.] ; affirmed, [1895] A. C. 495 ; *Thomson* v. *Lord Clanmorris*, [1900] 1 Ch. 718.

Art. 44.

mines under the land of all these persons, so worked them that the lands of B. sank, and after more than six years' interval (the period of limitation in actions for causing subsidence), their sinking caused an injury to A.'s houses: —*Held*, that A.'s right of action was not barred, as the tort to him was the subsidence caused by the working of the mines, and not the working itself (*n*). And so, too, each fresh subsidence is a new cause of action for which a fresh action can be brought within six years of such subsidence (*o*).

Abstracting coal.

(2) But where a trespasser wrongfully worked *the plaintiff's coal*, in consequence of which the surface of the plaintiff's land subsided, it was held that the statute commenced to run from the working and taking away of the plaintiff's coal, and not from the subsidence; on the ground that the working of the coal was a complete tort, and that the subsidence was only a consequence of it (*p*).

Actions for recovery of chattels.

(3) A lease, belonging to the plaintiff, was fraudulently taken from him by his son, and deposited with B. to secure a loan made by B. to the plaintiff's son. The plaintiff was ignorant of this transaction. Subsequently B. became bankrupt, and his trustee in bankruptcy assigned the leasehold premises to the defendant. B. and the defendant were both ignorant of the fraud. The plaintiff then demanded the lease of the defendant, and upon his refusal began an action for wrongful detention and conversion of the lease; to which the defendant pleaded that the fraudulent deposit with B. was made more than six years before action brought, and that, consequently, the action was barred by the Statute of Limitations. The Court of Appeal, however, held that the statute only began to run when the plaintiff had a complete cause of action against the defendant, *i.e.*, *when he demanded the deed and was refused it*, and not from the receipt of the deed by B. In giving judgment, Lord ESHER, M.R., said: "I am of opinion that, in the present case, the Statute of Limitations does not apply; it applies only to an action brought against the defendant in respect of a wrongful act done by the

(*n*) *Backhouse* v. *Bonomi*, 9 H. L. Cas. 503.
(*o*) *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Cas. 127.
(*p*) *Spoor* v. *Green*, L. R. 9 Ex. 99.

defendant himself. The property in chattels, which are the subject-matter of this action, is not changed by the Statute of Limitations, though more than six years may elapse, and if the rightful owner recovers them, the other man cannot maintain an action against him in respect of them " (*q*).

Actions for recovery of land.

(4) There is a great distinction between actions for the recovery of chattels and actions for the recovery of land. For the **Statutes of Limitations do not bar the right to chattels** after the prescribed period, but **only bar the plaintiff's remedy** against the wrongdoer; whereas the **Real Property Limitation Acts bar and extinguish not merely the remedy but also the right** (*r*). Consequently, if a plaintiff has allowed another to remain in possession of land, without acknowledgment, for twelve years, he will be barred, although he may never have demanded delivery up of possession (*s*). Where, however, an intruder goes out of possession of land before acquiring a statutory title, the statute ceases to run, and the title of the true owner remains unaffected, even although he does not himself retake possession until after the expiration of the statutory period (*t*).

ART. 45.—*Continuing Torts.*

Where the tort is continuing, or recurs, a fresh right of action arises on each occasion (*u*).

Illustrations.

False imprisonment.

(1) Thus, where an action is brought against a person for false imprisonment, every continuance of the imprisonment *de die in diem* is a new imprisonment; and therefore the period of limitation commences to run from the last, and not the first day of the imprisonment (*v*).

Trespass.

(2) But where A. enters upon the land of B. and digs a ditch thereon, there is a direct invasion of B.'s rights, a completed trespass, and the cause of action for all injuries

(*q*) *Miller* v. *Dell*, [1891] 1 Q. B. 468 [C. A.]; and see also *Spackman* v. *Foster*, 11 Q. B. D. 99.

(*r*) See 3 & 4 Will. 4, c. 27, s. 34, and 37 & 38 Vict. c. 57, s. 9.

(*s*) See *Scott* v. *Nixon*, 3 Dru. & War. 388; *Lethbridge* v. *Kirkman*, 25 L. J. Q. B. 89; and *Moulton* v. *Edmonds*, 1 De G. F. & J. 246.

(*t*) *Agency Co.* v. *Short*, 13 App. Cas. 793; 59 L. T. 677 [P. C.].

(*u*) *Whitehouse* v. *Fellowes*, 10 C. B. (N.S.) 765.

(*v*) *Hardy* v. *Ryle*, 9 B. & C. 608.

Art. 45.

resulting therefrom commences to run at the time of the trespass, subject to existing disabilities. The fact that A. does not re-enter B.'s land and fill up the ditch does not make him a continuous wrongdoer and liable to repeated actions as long as the ditch remains unfilled, even though there afterwards arises new and unforeseen damage from the existence of the ditch (*w*).

Nuisance.

(3) But where the defendants (a highway authority) maintained and kept a ditch so as to be a nuisance, it was held that there was a continuing wrongful act in so keeping it, and that the period of limitation did not run from the first making of it (*x*).

ART. 46.—*Disability.*

Wherever a person is under disability, the statute only runs from the cesser of the disability (*y*). But whenever the statute once begins to run, it continues to do so notwithstanding subsequent disability (*z*).

By disability is meant infancy, lunacy, or idiocy, and formerly coverture; but since the Married Women's Property Act, 1882, was passed, the latter is no longer disability.

SECTION II.—PUBLIC AUTHORITIES PROTECTION ACT, 1893.

ART. 47.—*Special limitation in favour of Public Officers and Authorities.*

No action lies against any person:

(a) For any act done in pursuance or execution, or intended execution, of any Act of Parliament or of any public duty or authority, or

(*w*) *Kansas Pacific Railway* v. *Mihlman*, 17 Kansas Reports, 224.
(*x*) *Whitehouse* v. *Fellowes*, 10 C. B. (N.S.) 765.
(*y*) 21 Jac. 1, c. 16, s. 7; 3 & 4 Will. 4, c. 27, s. 16.
(*z*) *Rhodes* v. *Smethurst*, 4 M. & W. 42; *Lafond* v. *Ruddock* 13 C. B. 819.

Art. 47.

(b) In respect of any neglect or default in the execution of any Act of Parliament, duty or authority,

unless it be commenced within **six months** next after the act, neglect or default complained of, or in case of a continuance of injury or damage within six months next after the ceasing thereof (*a*).

Continuance of damage.

The period of six months runs from the act, neglect or default complained of: *or* "in case of a **continuance of injury or damage,**" from the ceasing thereof. These words have been held to apply not to cases where damage inflicted once and for all continues unrepaired, but to cases where there is a new damage recurring day by day in respect of an act done, it may be once and for all at some prior time, or repeated, it may be from day to day. For instance, where a local authority discharges sewage day by day into a private lake, that is a "continuance of injury or damage" in respect of which an action lies, although it may have *begun* more than six months before action brought (*b*).

Explanation.

(1) The Act applies to servants of the Crown (*c*).

(2) The Act is not impliedly repealed by s. 8 of the Maritime Conventions Act, 1911 (*c*).

(3) The limitation of time for bringing an action laid down by this Act has no application to the Workmen's Compensation Act, 1906 (*cc*).

The protection of the Act is not available to a public body in matters which it is given permission, leave or licence to do, but only in matters which an Act of Parliament creates a duty, or there exists a public duty, to carry out (*ccc*).

Illustrations.

(1) A magistrate having convicted and fined the plaintiff for an offence under the Vaccination Acts, issued a distress

(*a*) 56 & 57 Vict. c. 61.

(*b*) *Harrington (Earl of)* v. *Derby Corporation*, [1905] 1 Ch. 205, 225.

(*c*) *The Danube II.*, [1921] P. 183 [C. A.].

(*cc*) *Fry* v. *Cheltenham Corporation* (1911), 81 L. J. K. B. 41 [C. A.]; *Tuckwood* v. *Rotherham Corporation*, [1921] 1 K. B. 526 [C. A.].

(*ccc*) *Edwards* v. *Metropolitan Water Board*, [1922] 1 K.B. 291 [C. A.], *per* BANKES, L.J., explaining *Bradford Corporation* v. *Myers*, [1916] A. C. 242.

Art. 47.

warrant in default of payment of the fine, and a distress was put in on the plaintiff's premises. Subsequently the conviction was quashed for want of jurisdiction. The plaintiff has six months *from the date of the wrongful entry* on his premises within which to bring his action for the illegal distress. The wrongful entry, not the order of the magistrate by authority of which it was made, was "the act complained of" (*d*).

(2) A municipal corporation acquired and worked tramways under their statutory powers. An action for damages for injuries sustained by a passenger on one of their tramcars in consequence of the negligence of their servants must be begun within six months of the negligence complained of (*e*).

Contractor under public authority.

(3) But though the protection of the Act extends to the officers of a public body and to persons acting under their direct mandate, it does not extend to an independent contractor doing work under contract with a public authority for his own profit. So a contractor laying down tram-lines under contract with the London County Council (though the county council would be protected) cannot claim the protection of the Act (*f*). And the Act has been held not to apply to ordinary contracts with a public authority (*g*).

(4) An action was brought against a district board having the control and management of a hospital, for negligence of a nurse, whereby a patient lost his life through being given an overdose of opium. The action was brought by the widow of the patient under Lord Campbell's Act. Under that Act the action must be brought within one year of the death. But it was held that the Public Authorities Protection Act applied, and as the action was not brought within six months of the negligence complained of it was too late (*h*).

(*d*) *Polley* v. *Fordham*, [1904] 2 K. B. 345.

(*e*) *Lyles* v. *Southend Corporation*, [1905] 2 K. B. 1 [C. A.].

(*f*) *Tilling* v. *Dick, Kerr & Co.*, [1905] 1 K. B. 562.

(*g*) *Sharpington* v. *Fulham Guardians*, [1904] 2 Ch. 449; and see *Clayton* v. *Pontypridd U. D. C.*, [1918] 1 K. B. 219; as to mandamus proceedings, see *R.* v. *Port of London Authority*, [1919] 1 K. B. 176.

(*h*) *Markey* v. *Tolworth Joint Isolation Hospital Board*, [1900] 2 Q. B. 454; and see *Williams* v. *Mersey Docks and Harbour Board*, [1905] 1 K. B. 804 [C. A.].

PART II.

RULES RELATING TO PARTICULAR TORTS.

CHAPTER I.

OF DEFAMATION.

ART. 48.—*Definitions.*

(1) **Defamation** is the publication concerning a person of a statement in words, writing, by pictures or significant gestures, which exposes such person to feelings of hatred, ridicule, or contempt, whereby he suffers injury to his reputation (not to his self-esteem).

(2) A **libel** for which an action will lie is a statement **in writing** (or in print, or in the form of a picture or caricature), published without lawful justification or excuse, calculated to convey to those to whom it is published an imputation on the plaintiff injurious to him in his trade or holding him up to hatred, contempt, or ridicule (*a*).

(3) **Slander** is an **oral** statement, published without lawful justification or excuse, calculated to convey to those to whom it is published an imputation on the plaintiff injurious to him in his trade or holding him up to hatred, contempt, or ridicule.

No action will lie for **slander** unless either (a) the plaintiff prove **special damage**, or (b) the slander is calculated to convey an imputation of one of the kinds enumerated in Art. 50.

(*a*) *Per* Lord BLACKBURN, *Capital and Counties Bank* v. *Henty*, in 7 App. Cas. 741, at p. 771.

Art. 48.

Explanation.

"Libels are generally in writing or printing, but this is not necessary; the defamatory matter may be conveyed in some other permanent form. For instance, a statue, a caricature, an effigy, chalk marks on a wall, signs or pictures may constitute a libel" (*aa*).

Analysis of libel.

The three elements necessary to constitute actionable libel are—

(1) that the words, etc., complained of are defamatory;
(2) that they refer to the plaintiff;
(3) that they were published by the defendant.

If the plaintiff establishes these three points, he makes out a *primâ facie* case.

Analysis of slander.

If the action is for **slander,** he must also prove special damage, unless the slander falls within Art. 50, para. 2, *infra* (*b*).

Defence.

By proving these points, however, the plaintiff only establishes a *primâ facie* case, and in answer to it the defendant is entitled to prove that the publication was

Justification.

justified. He may always justify by showing that the

Truth.

statement complained of was substantially **true.** For the law will not allow a man to recover damages in respect of an injury to a character which he either does not or ought not to possess (*c*). The defendant may also prove that

Privilege.

the publication was privileged, that is, that the occasion of publication was such that he was justified in publishing the words whether true or not. For other defences see Arts. 56 and 57.

ART. 49.—*What is Defamatory.*

(1) Defamatory words or pictures or effigies are such as impute conduct or qualities tending to disparage or degrade the plaintiff (*d*), *or* to

(*aa*) *Monson* v. *Tussaud's*, [1894] 1 Q. B. 671 [C. A.], *per* LOPES, L.J.

(*b*) *Jones* v. *Jones*, [1916] 2 A. C. See judgment of Lord SUMNER at p. 500.

(*c*) *M'Pherson* v. *Daniels* (1829), 10 B. & C. 272; *Wakley* v. *Cooke* (1849), 4 Ex. 511.

(*d*) *Digby* v. *Thompson*, 4 B. & Ad. 821.

expose him to contempt, ridicule, or public hatred; or to prejudice him in the way of his office, profession, or trade (*e*). Art. 49.

Provided that words published of a corporation are not actionable without proof of special damage if they refer only to personal character or reputation; but words calculated to affect a corporation in its property or business may be actionable without proof of special damage (*f*).

(2) It is for the court to say whether the words complained of are capable of bearing a defamatory meaning, and for the jury to say whether they in fact bear that meaning (*g*).

(3) The words used must (if nothing is alleged to give them an extended sense) be construed in the sense in which they would be understood by ordinary persons. If they are not capable of a defamatory meaning in that sense they may nevertheless be actionable if it is proved that they would be understood by the persons to whom they were published (*g*).

(4) It is immaterial whether or not the defendant meant the words to be defamatory. The question is whether the words he used were calculated to convey a disparaging imputation (*h*).

Note.—Words which are not defamatory in their ordinary sense may, nevertheless, convey a defamatory meaning owing to the circumstances in which they are Innuendo.

(*e*) *Miller* v. *David* (1874), L. R. 9 C. P. 118.

(*f*) *South Hetton Coal Co.* v. *North Eastern News Association*, [1894] 1 Q. B. 133; *Manchester Corporation* v. *Williams*, [1891] 1 Q. B. 94.

(*g*) *Capital and Counties Bank* v. *Henty*, 7 App. Cas. 741.

(*h*) *Per* Lord Blackburn in *Capital and Counties Bank* v. *Henty*, 7 App. Cas. 741, at p. 772; *per* Lord Loreburn in *E. Hulton & Co.* v. *Jones*, [1910] A. C. 20, at p. 23.

Art. 49.

spoken. If I say of a man "he is no better than his father," these words are not in their ordinary sense capable of a defamatory meaning. But if the father is known by the persons to whom the words are used to have been a scoundrel, the words used would convey to them the meaning that the son also is a scoundrel. The words then would be defamatory in the sense in which they were understood by the persons to whom they were addressed.

As Lord BLACKBURN says: "There are no words so plain that they may not be published with reference to such circumstances, and to such persons knowing these circumstances, as to convey a meaning very different from that which would be understood from the same words used under different circumstances" (*i*).

Innuendo.

Accordingly, to make out a case when **words not defamatory in their ordinary sense** have been used, the plaintiff must allege and prove an **innuendo**, *i.e.*, he must allege and prove what the words meant to the persons to whom they were used. So in the illustration we have taken, he would allege that the words used meant "that the plaintiff was a scoundrel." He will prove this meaning by showing by evidence that the father was a scoundrel, and that the person using the words and the person to whom they were addressed knew that the father was a scoundrel.

Hence the rule that **whenever the words are not defamatory in their ordinary sense, the plaintiff must allege in his statement of claim an innuendo, and must prove the facts necessary to satisfy the jury that the meaning alleged in the innuendo was the meaning of the words.** But when words are **defamatory in their ordinary sense, no innuendo is necessary.** It is for the court to say whether, taking into account the manner and occasion of the publication and all the circumstances, the words are capable of bearing the meaning alleged in the innuendo (*j*), and for the jury to say whether in fact they bore that meaning.

(*i*) *Capital and Counties Bank* v. *Henty*, 7 App. Cas. 741, 771.
(*j*) *Stubbs Limited* v. *Russell*, [1913] A. C. 386; *Stubbs Limited* v. *Mazure*, [1920] A. C. 66.

Art. 49.

Illustrations of words defamatory in their ordinary sense.

(1) Thus, describing another as an infernal villain is a disparaging statement sufficient to sustain an action (*k*); and so is an imputation of insanity (*l*); or insolvency, or impecuniousness (*m*); or even of past impecuniousness (*n*); or of gross misconduct (*o*); or of turf-trickery (*p*); or of ingratitude (*q*). Also the publication in a newspaper of a story of no literary merit as being that of a well-known author has been held libellous (*r*).

(2) So, reflections on the professional and commercial conduct of another are defamatory; as, for instance, to say of a physician that he is a quack. So, also, calling a newspaper proprietor "a libellous journalist" is defamatory (*s*), although it would appear that applying the word "Ananias" to a newspaper does not necessarily impute wilful and deliberate falsehood to its manager and proprietor (*t*).

Words defamatory by innuendo.

(3) Inserting the plaintiffs' names under the head of "first meetings under the Bankruptcy Act" is libellous, the innuendo being that the plaintiffs had become bankrupt, or taken proceedings in liquidation (*u*). And the insertion of the plaintiff's name in a list of persons against whom decrees in absence had been obtained in the Small Debts Court is libellous, the innuendo being the plaintiff's refusal or delay to pay his debts (*v*).

Words not defamatory in their ordinary sense.

(4) When a firm of brewers sent out to their customers a circular in the following terms: "Messrs. Henty & Sons hereby give notice that they will not receive in payment

(*k*) *Bell* v. *Stone*, 1 Bos. & P. 331.

(*l*) *Morgan* v. *Lingen*, 8 L. T. 800.

(*m*) *Metropolitan Saloon Omnibus Co.* v. *Hawkins*, 28 L. J. Ex. 201; *Eaton* v. *Johns*, 1 Dowl. (N.S.) 602.

(*n*) *Cox* v. *Lee*, L. R. 4 Ex. 284.

(*o*) *Clement* v. *Chivis*, 9 B. & C. 172.

(*p*) *Greville* v. *Chapman*, 5 Q. B. 731, at p. 744.

(*q*) *Cox* v. *Lee*, L. R. 4 Ex. 284.

(*r*) *Ridge* v. *The English Illustrated Magazine, Limited* (1913), 29 T. L. R. 592.

(*s*) *Wakley* v. *Cooke*, 4 Ex. 511.

(*t*) *Australian Newspaper Co.* v. *Bennett*, [1894] A. C. 284.

(*u*) *Shepheard* v. *Whitaker*, L. R. 10 C. P. 502.

(*v*) *Stubbs Limited* v. *Mazure*, [1920] A. C. 66, and compare this with *Stubbs Limited* v. *Russell*, [1913] A. C. 386.

Art. 49.

cheques drawn on any of the branches of the Capital and Counties Bank," it was held that (1) the words were not libellous in their natural meaning, and (2) there were no facts proved which made them capable of bearing the meaning alleged in the innuendo to the effect that the plaintiffs were insolvent. Accordingly, the circular was not actionable although its effect had been to cause a run on the bank and loss to the plaintiffs (*w*).

(5) And in a later case it was held that a circular sent out by an insurance company for which the plaintiff had acted as agent, to the effect that the agency of the plaintiff had "been closed by the directors," was incapable of meaning that the plaintiff had been dismissed for some reason discreditable to him (as alleged in the innuendo), although some persons might choose to draw this inference, not from the language used, but from the fact referred to (*x*).

Corporations.

(6) It is actionable without special damage to say of a colliery company that the cottages let by the proprietors to their workmen are in an insanitary condition, for such an imputation is likely to injure its reputation in the way of its business (*y*). But inasmuch as a corporation, as distinguished from the individuals composing it, cannot be guilty of corrupt practices, it is not libellous without proof of special damage to charge a municipal corporation with corrupt practices (*z*).

Effigy.

(7) The exhibition of the waxen effigy of a person who has been tried for murder and acquitted, in company with the effigies of notorious criminals, may be defamatory (*a*).

ART. 50.—*When is Special Damage essential to an Action for Slander?*

(1) Except in the following cases spoken words are not actionable without proof of

(*w*) *Capital and Counties Bank* v. *Henty*, 7 App. Cas. 741.

(*x*) *Nevill* v. *Fine Art and General Insurance Co.*, [1897] A. C. 68.

(*y*) *South Hetton Coal Co., Limited* v. *North Eastern News Association*, [1894] 1 Q. B. 133 [C. A.].

(*z*) *Manchester Corporation* v. *Williams*, [1891] 1 Q. B. 94.

(*a*) *Monson* v. *Tussaud's, Limited, Monson* v. *Louis Tussaud*, [1894] 1 Q. B. 672 [C. A.].

special damage, and the damage complained of must in fact flow directly from the use by the defendant of the words complained of, *i.e.*, not be too remote (*c*). Art. 50.

(2) No proof of special damage need be given in the case of words imputing:

(a) A criminal offence punishable by imprisonment (*d*);

(b) Some disease tending to exclude the party defamed from society (*e*).

(c) Unchastity in a female (*f*);

(d) Unfitness of the plaintiff for his profession or trade, or office of profit (*g*);

(e) Dishonesty or malversation in a public office of trust (*h*); or

(f) Misconduct in an office of credit or honour such as would be ground for his removal from office (*i*).

(1) The true test of remoteness of damage is based in the cause of the damage complained of. Is such damage due to the use of the words alleged to be that cause or is it due to some independent act? (*j*) Special damage

(*c*) *Re Polemis* v. *Furness Withy & Co.*, [1921] 3 K. B. 560 [C.A.].

(*d*) *Webb* v. *Beavan*, 11 Q. B. D. 609; *Hellwig* v. *Mitchell*, [1910] 1 K. B. 609.

(*e*) *Bloodworth* v. *Gray*, 7 Man. & Gr. 334.

(*f*) Slander of Women Act, 1891.

(*g*) *Foulger* v. *Newcomb*, L. R. 2 Ex. 327; *Miller* v. *David* (1874), L. R. 9 C. P. 118.

(*h*) *Booth* v. *Arnold*, [1895] 1 Q. B. 571 [C. A.]; cf. *Alexander* v. *Jenkins*, [1892] 1 Q. B. 797.

(*i*) *Onslow* v. *Horne*, 2 W. Bl. 750.

(*j*) *Re Polemis* v. *Furness Withy & Co.*, *supra*; *Weld Blundell* v. *Stephens*, [1920] A.C. 957, *per* Lord SUMNER at 983; and see Spencer Bower on Actionable Defamation, 2nd Edition (1923), p. 282.

Art. 50.

resulting from the repetition of an original slander is too remote (*l*) unless the original slander is uttered to many persons and the subsequent loss may reasonably be attributed to this (*m*). But special damage caused by repetition of a slander is not too remote (1) when the original slander is made to a person who has a legal or moral duty to repeat it; (2) when the person repeating the slander is authorised or intended to do so (*n*).

The special damage must be some temporal loss.

(2) The special damage must be actual temporal loss (*o*), *i.e.*, loss of something pecuniary or capable of being estimated in money (*p*), mere *risk of loss* is not enough (*q*). Thus actual loss of trade or employment is enough (*r*), as also is actual loss of gratuitous hospitality (*s*), for a dinner has some pecuniary value; but loss of friends or society, pain, illness, and suffering, are not enough (*t*). But apparently, if special damage of pecuniary value be shown and the action is therefore maintainable, the damages awarded need not be limited to such special damage but may compensate also for loss to reputation generally (*u*).

Damage caused by plaintiff himself.

(3) If the damage be immediately caused by the plaintiff himself, he cannot sue. For instance, where the plaintiff (a young woman) told the slander to her betrothed, who consequently refused to marry her, it was held that no action would lie against the slanderer (*v*).

Imputation of unchastity.

(4) Formerly, words imputing unchastity to a woman were not actionable without proof of special damage except

(*l*) *Ward* v. *Weeks* (1830), 7 Bing. 211.
(*m*) *Ratcliffe* v. *Evans*, [1892] 2 Q. B. 524.
(*n*) *Derry* v. *Handley* (1867), 16 L. T. (N.S.) 263.
(*o*) *Per* BOWEN, L.J., in *Ratcliffe* v. *Evans*, [1892] 2 Q. B. 524 [C. A.], at p. 532.
(*p*) *Chamberlain* v. *Boyd*, 11 Q. B. D. 407.
(*q*) *Ibid.*, *per* BOWEN, L.J., at p. 416.
(*r*) *Evans* v. *Harries*, 1 H. & N. 251.
(*s*) *Davies* v. *Solomon*, L. R. 7 Q. B. 112.
(*t*) *Moore* v. *Meagher*, 1 Taunt. 39 [Ex. Ch.]; *Roberts* v. *Roberts*, 5 B. & S. 384; *Allsop* v. *Allsop*, 5 H. & N. 534.
(*u*) *Dixon* v. *Smith* (1860), 5 H. & N. 453.
(*v*) *Speight* v. *Gosnay*, 60 L. J. Q. B. 231 [C. A.].

Art. 50.

in the City of London. But by the Slander of Women Act, 1891 (*w*), this scandalous state of the law has been altered, and it is enacted that words spoken and published which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable : provided that the plaintiff shall not recover more costs than damages, unless the judge certifies that there was reasonable cause for bringing the action.

Examples of damage implied from imputation of crime.

(5) The words, " You are a rogue, and I will prove you a rogue, for you forged my name," are actionable *per se* (*x*). And it is immaterial that the charge was made at a time when it could not cause any criminal proceedings to be instituted. Thus the words " You are guilty " [innuendo " of the murder of D."] are a sufficient charge of murder to support an action without proof of special damage (*y*). But if words charging a crime are accompanied by an express allusion to a transaction which merely amounts to a civil injury, as breach of trust or contract, they are not actionable (*z*). Nor are words imputing an impossible crime, as " Thou hast killed my wife," who, to the knowledge of all parties, was alive at the time (*a*).

(6) The allegation, too, must be a direct charge of a crime punishable by imprisonment. The crime need not be indictable (*b*), but a charge of having committed a crime punishable by fine only, although it involves a liability to summary arrest, is insufficient, without proof of special damage (*c*). Thus, saying of another that he had forsworn himself is not actionable *per se*, without showing that the words had reference to some judicial inquiry (*d*). But an imputation that the plaintiff had brought a blackmailing

(*w*) 54 & 55 Vict. c. 51.

(*x*) *Jones* v. *Herne*, 2 Wils. 87.

(*y*) *Oldham* v. *Peake*, W. Bl. 959.

(*z*) *Per* Lord ELLENBOROUGH in *Thompson* v. *Bernard*, 1 Camp. 48 ; and *per* Lord KENYON, *Christie* v. *Cowell*, Peake, 4.

(*a*) *Snag* v. *Gee*, 4 Co. Rep. 16 ; *Heming* v. *Power*, 10 M. & W. 564, 569.

(*b*) *Webb* v. *Beavan*, 11 Q. B. D. 609.

(*c*) *Hellwig* v. *Mitchell*, [1910] 1 K. B. 609.

(*d*) *Holt* v. *Scholefield*, 6 Term Rep. 691.

Art. 50.

action is actionable without proof of special damage, for by inference it imputed to the plaintiff that he was guilty of an indictable offence (*e*).

(7) So words imputing mere suspicion of a crime are not actionable without proof of special damage (*f*).

Imputation of unfitness for society.

(8) Again, to allege the *present* possession of an infectious, or even a venereal, disease is actionable, but a charge of past infection is not; for it shows no present unfitness for society (*g*).

Imputation of unfitness for business or office of profit.

(9) It is quite clear that, as regards a man's business, or profession, or office, *if it be an office of profit*, the mere imputation of want of ability to discharge the duties of that office is sufficient to support an action. It is not necessary that there should be imputation of immoral or disgraceful conduct; the probability of pecuniary loss from such imputation obviates the necessity of proving special damage. But the mere disparagement of a tradesman's goods is not sufficient. The disparagement must be of his unfitness for business (*h*), or some allegation which must necessarily injure his business (*i*). Thus, words imputing drunkenness to a master mariner whilst in command of a ship at sea are actionable *per se* (*j*). And similarly where a clergyman is beneficed or holds some ecclesiastical office, a charge of incontinence is actionable; but it is not so if he holds no ecclesiastical office (*k*).

(10) So to say of a surgeon "he is a bad character; none of the men here will meet him," is actionable (*l*). Or of an attorney that "he deserves to be struck off the roll" (*m*). But without special damage it is not actionable

(*e*) *Marks* v. *Samuel*, [1904] 2 K. B. 287 [C. A.].

(*f*) *Simmons* v. *Mitchell*, 6 App. Cas. 156 [P. C.].

(*g*) See *Carslake* v. *Mappledoram*, 2 Term Rep. 473; *Bloodworth* v. *Gray*, 7 Man. & Gr. 334.

(*h*) See *White* v. *Mellin*, [1895] A. C. 154.

(*i*) See *Royal Baking Powder Co.* v. *Wright, Crossley & Co.*, 15 R. P. C. 677.

(*j*) *Irwin* v. *Brandwood*, 2 H. & C. 960.

(*k*) *Gallwey* v. *Marshall*, 23 L. J. Ex. 78, followed in *Wakeford* v. *Wright*, 39 T. L. R. 107 [C. A.].

(*l*) *Southee* v. *Denny*, 1 Ex. 196.

(*m*) *Phillips* v. *Jansen*, 2 Esp. 624.

Art. 50.

to impute to a solicitor insolvency (*n*), or to say "he has defrauded his creditors, and been horsewhipped off the course at Doncaster," because this has no reference to his profession (*o*). But this seems a curious refinement. A similarly absurd distinction has been taken between saying of a barrister "He hath as much law as a jackanapes" (which is actionable *per se*) and "He hath no more wit than a jackanapes" (which is not actionable). The point being that law is, but wit is not, essential in the profession of a barrister (*p*).

Unfitness for offices of honour and credit.

(11) With regard to slander upon persons holding mere offices of honour, the loss of which would not necessarily involve a pecuniary loss, the mere imputation of want of ability or capacity is not enough. The imputation to be actionable *per se* must be one which, if true, would show **that the plaintiff ought to be and could be deprived of his office by reason of the incapacity imputed to him.** The implied damage is the risk of loss of the office which he holds. Thus, an imputation of drunkenness against a town councillor is not actionable without proof of special damage. For such conduct, however objectionable, is not such as would enable him to be removed from or deprived of that office, nor is it a charge of malversation in his office (*q*). But a charge of **dishonesty in his office,** against one who holds a public office of trust, such as that of an alderman of a borough, is actionable without special damage, even although there be no power to remove him (*r*).

ART. 51.—*The Libel or Slander must refer to the Plaintiff.*

The plaintiff must prove that the words complained of might reasonably be understood by the persons to whom they are published to refer to him, and that they were understood to refer to him.

(*n*) *Dauncey* v. *Holloway*, [1901] 2 K. B. 441 [C. A.].
(*o*) *Doyley* v. *Roberts* (1837), 3 Bing. N. C. 835.
(*p*) See *per* POLLOCK *arguendo*, *Ayre* v. *Craven*, 2 A. & E. 2, at p. 4.
(*q*) *Alexander* v. *Jenkins*, [1892] 1 Q. B. 797 [C. A.].
(*r*) *Booth* v. *Arnold*, [1895] 1 Q. B. 571 [C. A.].

Art. 51. It is no defence that the defendant did not intend to refer to the plaintiff (*s*).

Comment. It is not necessary that the plaintiff should be referred to by name. A person may be libelled under a fictitious name or by mere description. But there must be enough to show ordinary readers that the plaintiff is the person about whom the defamatory words are used. So "if a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual" (*t*).

On the other hand, when the words used are such as to indicate a particular person, he can sue even though the defendant did not know of his existence and did not intend to defame him (*s*).

Illustrations. (1) So where an article in a newspaper described certain sales of forged antiques as an attempt at deception and extortion, but did not refer to any particular dealer by name or description, it was held that no dealer could sue for libel, as the libel attacked not an individual but a class (*u*). But if the class be limited in number, then each member may be libelled (*v*).

(2) A newspaper published an article describing a motor festival at Dieppe. The article contained the words: "Whist! there is Artemus Jones with a woman who is not his wife, who must be, you know, the other thing," etc., and went on to say that Artemus Jones was a churchwarden when at home, but that when on the French side of the Channel "he is the life and soul of a gay little band that haunts the Casino and turns night into day, besides betraying a most unholy delight in the society of female butterflies." Neither the writer nor the editor of the paper intended to refer to the plaintiff, a well-known barrister named Artemus Jones. The sketch was a mere fancy sketch of life abroad, and the name "Artemus Jones" was used as a fancy name, describing an imaginary character.

(*s*) *E. Hulton & Co.* v. *Jones*, [1910] A. C. 20.
(*t*) *Per* WILLES, J., in *Eastwood* v. *Holmes*, 1 F. & F. 349.
(*u*) *Eastwood* v. *Holmes*, *supra*.
(*v*) *Harrison* v. *Thornborough*, 10 Mod. 196.

Art. 51.

It was proved, however, that readers of the paper thought the article referred to Mr. Jones. The judge directed the jury that if persons reading the article might reasonably think it related to the plaintiff, they might find a verdict for him. The jury found for the plaintiff, and the House of Lords held that he was entitled to judgment (*w*).

ART. 52.—*Publication.*

The making known of a libel or slander **to any person other than the object of it,** is publication in its legal sense, and repetition of defamatory matter is a new publication and a distinct cause of action (*x*).

Publication explained.

(1) "Though, in common parlance, that word [publication] may be confined to making the contents known to the public, yet its meaning is not so limited in law. The making of it known to an individual is indisputably, in law, a publishing" (*y*). Publication, therefore, being a question of law, it is for the jury to find whether the facts by which it is endeavoured to prove publication are true; but for the court to decide whether those facts constitute a publication in point of law (*z*).

Telegrams and post-cards.

(2) If the libel be contained in a telegram, or be written on a post-card, that is publication, even though they be addressed to the party libelled; because the telegram must be read by the transmitting and receiving officials, and the post-card will in all probability be read by some person in the course of transmission (*a*), unless the statement on the post-card is of such a nature that it would not be understood as defamatory by persons reading it casually (*b*). But where a letter is sent through the post in an unenclosed envelope there is no such presumption of publication (*c*).

(*w*) *E. Hulton & Co.* v. *Jones*, [1910] A. C. 20.
(*x*) *Duke of Brunswick* v. *Harmer* (1849), 14 Q. B. 185.
(*y*) *R.* v. *Burdett*, 4 B. & Ald. 143.
(*z*) *Street* v. *Licensed Victuallers' Society*, 22 W. R. 553; *Hart* v. *Wall*, 2 C. P. D. 146.
(*a*) *Williamson* v. *Freer*, L. R. 9 C. P. 393.
(*b*) *Sadgrove* v. *Hole*, [1901] 2 K. B. 1.
(*c*) *Huth* v. *Huth*, [1915] 3 K. B. 32.

Art. 52.
Dictating libel.

(3) So, dictating a libellous letter to a typist, and giving it to an office boy to make a press copy, is publication. But if the occasion is privileged the whole course of office routine is privileged (*d*), and the privilege, so long as reasonably used, covers communication to the servants of the recipient (*e*). But malice will always defeat this privilege (*f*).

Husband and wife.

(4) The communication of a libel *by the writer to his own wife* is not "publication," because, in the eye of the law, husband and wife are one person (*g*).

But communication *to the wife of the person defamed* is "publication." Obviously, a man may suffer grievously if imputations on his character are made to his wife (*h*).

ART. 53.—*Repeating Libel or Slander.*

(1) An action will lie for slander or libel against a defendant who is merely a repeater, printer, or publisher of it, unless the defendant can show: (i) That he did not know that he was publishing a libel or slander. (ii) That his ignorance was not due to any negligence on his part. (iii) That in the case of libels he did not know, and had no grounds for thinking, the document was likely to contain libellous matter (*i*).

(2) But in slander, if the special damage arise simply from the repetition, the originator

(*d*) *Pullman* v. *Hill & Co.*, [1891] 1 Q. B. 524; *Boxsius* v. *Goblet Frères*, [1894] 1 Q. B. 842.

(*e*) *Roff* v. *British & French, etc. Co.*, [1918] 2 K. B. 677; *Edmondson* v. *Birch*, [1907] 1 K. B. 371, *post*, p. 127.

(*f*) *Smith* v. *Streatfield*, [1913] 3 K. B. 764.

(*g*) *Wennhak* v. *Morgan*, 20 Q. B. D. 635.

(*h*) *Wenman* v. *Ash*, 13 C. B. 836.

(*i*) *Emmens* v. *Pottle*, 16 Q. B. D. 354; *Vizetelly* v. *Mudie's Select Library*, [1900] 2 Q. B. 170; *Weldon* v. *Times Book Co.* (1912), 28 T. L. R. 143.

will not be liable (*j*); except (a) where the originator has authorised the repetition (*k*); or (b) where the words are originally spoken to a person who is under a moral obligation to communicate them to a third person (*l*). Art. 53.

(1) But where A. slandered B. in C.'s hearing, and C., without authority, repeated the slander to D., *per quod* D. refused to trust B., it was held that no action lay against A., the original utterer, as the damage was the result of C.'s unauthorised repetition and not of the original statement (*m*). But if a defamatory letter meant for X. is opened and read by Y., the writer of such letter is not liable if in the circumstances he had no reason to expect Y. would so act, as he has made no publication of his letter to Y. (*n*). Example.

(2) So the printing and publishing by a third party of oral slander (not *per se* actionable) renders the person who prints, or writes and publishes the slander, and all aiding or assisting him, liable to an action for libel, although the originator, who merely *spoke* the slander, will not be liable (*o*). Printing slander.

(3) In *Derry* v. *Handley* (*l*), Cockburn, C.J., observed: "Where an actual duty is cast upon the person to whom the slander is uttered to communicate what he had heard to some third person (as when a communication is made to a husband, such as, if true, would render the person the subject of it unfit to associate with his wife and daughters), the slanderer cannot excuse himself by saying, 'True, I told the husband, but I never intended that he should carry the matter to his wife.' In such case the communication is privileged, and an exception to the rule to which I have referred; and the originator of the slander, and not the bearer of it, is responsible for the consequences." Duty to repeat.

(*j*) *Parkins* v. *Scott*, 1 H. & C. 153.
(*k*) *Kendillon* v. *Maltby*, Car. & M. 402.
(*l*) *Derry* v. *Handley*, 16 L. T. (N.S.) 263.
(*m*) *Ward* v. *Weeks*, 4 Moo. & P. 808.
(*n*) *Powell* v. *Gelston*, [1916] 2 K. B. 615.
(*o*) *McGregor* v. *Thwaites*, 3 B. & C. 24.

Art. 53.

Publisher of libel.

(4) Upon this principle the publisher, as well as the author of a libel, is liable; and the former cannot exonerate himself by naming the latter. For "of what use is it to send the name of the author with a libel that is to pass into a part of the country where he is entirely unknown? The name of the author of a statement will not inform those who do not know his character whether he is a person entitled to credit for veracity or not" (*p*).

Libels in newspapers, periodicals and books.

(5) When a libel is published in a newspaper, periodical or book, the author is liable, for not only does he publish it to the editor and compositors, but he is a participator in the publication to the public. The proprietor who publishes it by his servants is liable for the acts of his servants. The printer prints it by his servants, and therefore he is liable for a libel contained in it. The editor also is usually responsible for the publication (*q*).

Innocent disseminators.

(6) A more difficult question arises with regard to the dissemination of newspapers and books by news-vendors, booksellers, and lending libraries (*qq*). *Primâ facie* all these persons take part in publishing libels contained in the papers or books they sell. But a person who merely disseminates a newspaper or book which contains a libel is excused if he can show the facts set out in Art. 53 (1).

ART. 54.—*Justification.*

That the statements complained of as defamatory are true in fact is an absolute defence in an action of defamation.

(1) The defence must set out particulars of the facts relied on, and at the trial must prove the whole of the libel is substantially true (*r*). Facts occurring *after* publication may be admissible in support of justification (*s*).

(*p*) *Per* BEST, J., *De Crespigny* v. *Wellesley*, 5 Bing. 403.

(*q*) *Per* Lord ESHER in *Emmens* v. *Pottle*, 16 Q. B. D. 354, 357.

(*qq*) *Vizetelly* v. *Mudie's Select Library*, [1900] 2 Q. B. 170 [C. A.]; *Weldon* v. *Times Book Co.* (1912), 28 T. L. R. 143 [C. A.].

(*r*) *Arnold* v. *Bottomley*, [1908] 2 K. B. 151; *Reg.* v. *Labouchere* (1880), 14 Cox. C. C. 419; *Zierenberg* v. *Labouchere*, [1893] 2 Q. B. 183.

(*s*) *Maisel* v. *Financial Times*, [1915] 3 K. B. 336.

(2) LITTLEDALE, J., thus explains the principle of the defence of justification : " If the defendant relies upon the truth as an answer to the action, he must plead that matter specially ; not because it negatives the charge of malice (for a person may wrongfully or maliciously utter slanderous matter though true, and thereby subject himself to an indictment), but because it shows that the plaintiff is not entitled to recover damages. For the law will not permit a man to recover damages in respect of an injury to a character which he either does not, or ought not to, possess " (*t*).

Art. 54.

Explanation of justification.

(3) The plea of " fair comment " does not arise if the plea of justification is made good (*tt*).

ART. 55.—*Fair Comment.*

(1) No action will lie if the defendant can prove that the words complained of are a fair and *bonâ fide* comment on a matter of public interest.

(2) The court decides (i) whether the matter commented on is one of public interest ; (ii) whether there is evidence that any part of the words complained of go beyond the limits of fair comment.

(3) The jury, if the court is of opinion that there is some evidence that the comment is not fair, finds whether it is so or not.

(4) Matters of public interest include (*inter alia*) literary and dramatic works, political matters, and the public conduct of public men, but not their private conduct (*u*).

(5) The plea of fair comment does not arise if the plea of justification is made out (*tt*).

(*t*) See *M'Pherson* v. *Daniels*, 10 B. & C. 263, at p. 272.

(*tt*) *Dakhyl* v. *Labouchere*, [1908] 2 K. B. 327 [H. L.], approved *Sutherland* v. *Stopes*, [1925] A. C. 47.

(*u*) *Wisdom* v. *Brown* (1885), 1 T. L. R. 412 ; *Pankhurst* v. *Hamilton* (1887), 3 T. L. R. 500.

Art. 55.

The Rolled-up Plea.

(1) It has become usual for a defendant in a libel action to plead the "rolled-up" plea, namely: "In so far as the said words consist of allegations of fact the said words are in their natural and ordinary meaning true in substance and in fact, and in so far as the said words consist of expressions of opinion they are fair comment made in good faith and without malice for the benefit of the public upon the said facts, which are a matter of public interest" (*uu*). This is a plea of fair comment only (*v*). The court will not order the defendant to specify which of the words complained of he relies on as being statements of fact and which as being statements of opinion (*vv*).

Fair comment not justification.

(2) The defence of fair comment must not be confounded with justification on the one hand, or privilege on the other. If a defendant justifies, he must prove that the *facts* stated in the libel are substantially true. If he succeeds, he makes out his defence; if he fails, he may, nevertheless, successfully contend that the statements are in the nature of comment on a matter of public interest (*w*).

Literary criticism.

(3) If the alleged libel is a criticism of some such matter of public interest as a literary or dramatic work, and the statements are in the nature of comment, the defendant need not make out that they are just; it is enough if he can satisfy the jury that they are fair and honest. Thus, if a critic states of a play that it is "dull, vulgar and degraded," and relies on the defence of fair comment, he will succeed if this is an expression of honest opinion, even though the comment be not such as a jury might think a just or reasonable appreciation of the play (*ww*).

But the expressions used must not pass the limits of criticism. Facts are not comment; and if facts are misstated, the defence of fair comment is of no avail, as when in criticising a play the critic stated it was founded

(*uu*) First allowed in *Penrhyn* v. *Licensed Victuallers Mirror* (1890), 7 T. L. R. 1.

(*v*) *Sutherland* v. *Stopes*, [1925] A. C. 47.

(*vv*) *Aga Khan* v. *Times Publishing Co.*, [1924] 1 K. B. 675 [C. A.].

(*w*) *Digby* v. *Financial News*, [1907] 1 K. B. 507; *Peter Walker & Son, Ltd.* v. *Hodgson*, [1909] 1 K. B. 256; *Wootton* v. *Sievier*, [1913] 3 K. B. 499.

(*ww*) *McQuire* v. *Western Morning News*, [1903] 2 K. B. 100.

Art. 55.

on adultery, when in fact there was no incident of adultery in it. This cannot be "comment," fair or otherwise (*x*).

So, too, criticism of a literary work must not be used as a cloak for mere invective or personal imputations not arising out of the subject-matter or based on fact. Statements of this kind are not comment on a literary work, and are libellous if they are defamatory and not true (*y*).

Under these principles, not only books and works of art, but even tradesmen's advertisements, may be fairly criticised (*z*).

Attacks on public men.

(4) When, however, the defence of fair comment is set up to an attack on the **conduct of public men,** the line is drawn more closely. A public man may be attacked in his **public conduct,** but **not in his private conduct** (except in so far as it touches on his public conduct). And even in regard to his public conduct, if imputations are made which charge a public man with base and sordid motives or dishonesty in the discharge of his duties, the defence of fair comment will not avail unless it is based upon facts which are truly stated, and the facts warrant the imputation made, *i.e.*, the inference drawn from the facts is a reasonable inference from those facts (*a*).

Fair comment and privilege.

(5) On the other hand, fair comment must be distinguished from privilege. If the defence is privilege, and the privilege is established, the plaintiff fails however grossly untrue the libel may be, unless the defendant was actuated by express malice in making it. If (in the case of qualified privilege) there was express malice, the defence of privilege fails. In fair comment no question of malice arises. The only question is, "Is the comment fair, or does it exceed the bounds of fair criticism?" (*b*).

(*x*) *Merivale* v. *Carson*, 20 Q. B. D. 275; *Hunt* v. *Star Newspaper Co.*, [1908] 2 K. B. 320.

(*y*) *Thomas* v. *Bradbury, Agnew & Co.*, [1906] 2 K. B. 627.

(*z*) *Paris* v. *Levy*, 30 L. J. C. P. 11.

(*a*) *Campbell* v. *Spottiswoode*, 3 B. & S. 769; *Hunt* v. *Star Newspaper Co.*, [1908] 2 K. B. 309; *Dakhyl* v. *Labouchere*, [1908] 2 K. B. 325; *Joynt* v. *Cycle Trade Publishing Co.*, [1904] 2 K. B. 292.

(*b*) See *per* Blackburn, J., in *Campbell* v. *Spottiswoode*, 3 B. & S. 769; *Merivale* v. *Carson*, 20 Q. B. D. 275.

Art. 55. Fair comment is outside the region of libel altogether, whereas a privileged communication is one which is libellous, but for which no action will lie, because it is made in circumstances which make it privileged (*b*).

ART. 56.—*Absolute Privilege.*

No action lies for a statement made upon an occasion which is **absolutely privileged,** although made maliciously. Judicial, Parliamentary and State proceedings are occasions of absolute privilege.

NOTE.—CHANNELL, J. (*c*), thus explains the nature of the absolute privilege in judicial proceedings: "There is no private right of a judge or a witness or an advocate to be malicious. It would be wrong of him, and *if it could be proved*, I am by no means sure that it would not be actionable. The real doctrine of what is called 'absolute privilege' is that in the public interest it is not desirable to inquire whether the words or acts of certain persons are malicious or not. It is not that there is any privilege to be malicious, but that, so far as it is a privilege of the individual—I should call it rather a right of the public—the privilege is to be exempt from all inquiry as to malice; that he should not be liable to have his conduct inquired into to see whether it is malicious or not—the reason being that it is desirable that persons who occupy certain positions as judges, as advocates, or as litigants, should be perfectly free and independent, and to secure their independence that their acts and words should not be brought before tribunals for inquiry into them merely on the allegation that they are malicious."

Absolute privilege. Parliamentary proceedings.

(1) Speeches in Parliament are absolutely and irrebuttably privileged (*d*); and a faithful report in a public newspaper of a debate of either House of Parliament, containing matter disparaging to the character of an individual

(*b*) See *per* BLACKBURN, J., in *Campbell* v. *Spottiswoode*, 3 B. & S. 769; *Merivale* v. *Carson*, 20 Q. B. D. 275.

(*c*) *Bottomley* v. *Brougham*, [1908] 1 K. B. 584.

(*d*) *Stockdale* v. *Hansard*, 9 A. & E. 1; *Dillon* v. *Balfour*, 20 L. R. Ir. 601.

Art. 56.

which had been spoken in the course of the debate, is not actionable at the suit of the person whose character has been called in question (*e*). Statements of witnesses before Parliamentary Committees are also privileged (*f*). Reports, papers, votes and proceedings published by order of either House of Parliament are absolutely privileged (*g*).

Official despatches and reports.

(2) Communications relating to affairs of State made by one officer of State to another in the course of duty are also absolutely privileged (*h*).

Judicial proceedings and matters of State.

(3) All judges, inferior as well as superior, are privileged in respect of words spoken in the course of a judicial proceeding, although they are spoken falsely and maliciously, and without reasonable or probable cause (*i*). But the privilege of inferior judges is confined to cases where they have jurisdiction or ought not to have known they lacked jurisdiction (*j*); and this privilege extends to counsel, for words spoken with reference to and in the course of a judicial inquiry, although the words are irrelevant to any issue before the tribunal (*k*). Solicitors acting as advocates have a like privilege (*l*). The report of an Official Receiver made to the court in the winding up of a company is privileged on the same ground, as also is the annual report of the Inspector-General in Bankruptcy to the Board of Trade (*m*).

(4) Statements of witnesses made in the course of proceedings in a court of justice, or in any authorised tribunal acting judicially, or for the purpose of preparing proofs for use in such proceedings (*n*), can never be the subject of an action (*o*); and a military man giving evidence before a

(*e*) *Wason* v. *Walter*, L. R. 4 Q. B. 73.

(*f*) *Goffin* v. *Donnelly*, 6 Q. B. D. 307.

(*g*) Parliamentary Papers Act, 1840 (3 & 4 Vict. c. 9), ss. 1, 2.

(*h*) *Chatterton* v. *Secretary of State for India*, [1895] 2 Q. B. 189 [C. A.], and *Dawkins* v. *Lord Paulet* (1869), 5 Q. B. 94.

(*i*) *Scott* v. *Stansfield*, L. R. 3 Ex. 220; *Law* v. *Llewellyn*, [1906] 1 K. B. 487.

(*j*) *Anderson* v. *Gorrie*, [1895] 1 Q. B., at p. 671.

(*k*) *Munster* v. *Lamb*, 11 Q. B. D. 588.

(*l*) *Ibid.*, and *Mackay* v. *Ford*, 29 L. J. Ex. 404.

(*m*) *Bottomley* v. *Brougham*, [1908] 1 K. B. 584; *Burr* v. *Smith*, [1909] 2 K. B. 306.

(*n*) *Watson* v. *M'Ewan*, [1905] A. C. 480; *Beresford* v. *White* (1914), 30 T. L. R. 591 [C. A.].

(*o*) *Seaman* v. *Netherclift*, 2 C. P. D. 53; *Barratt* v. *Kearns*, [1905] 1 K. B. 504.

Art. 56. military court of inquiry which has not power to administer an oath, is entitled to the same protection as that enjoyed by a witness under examination in a court of justice (*p*). So also is a person who fills in a form required for obtaining a lunacy order (*q*).

ART. 57.—*Qualified Privilege.*

(1) No action lies for a communication made upon an occasion of qualified privilege and fairly warranted by it, unless it be proved to have been made maliciously—*i.e.*, with an improper motive (*r*).

(2) Communications are made upon occasions of qualified privilege if made by a person in discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs in matters where (*s*) a common interest exists between the person communicating and the person to whom the communication is made. Such communications, if fairly warranted by any reasonable occasion or exigency and honestly made, are protected for the common convenience and welfare of society (*t*).

(3) It is the duty of the judge to determine whether an occasion is privileged or not, and if it is, and there is no evidence of actual malice to go to the jury, he must enter judgment for the defendant (*s*).

(4) It is for the jury to find whether a communication made upon a privileged occasion is

(*p*) *Dawkins* v. *Rokeby*, L. R. 7 H. L. 744.

(*q*) *Hodson* v. *Pare*, [1899] 1 Q. B. 455.

(*r*) *Stuart* v. *Bell*, [1891] 2 Q. B. 341.

(*s*) *Clark* v. *Molyneux*, 3 Q. B. D., at p. 246; *McQuire* v. *Western Morning News*, [1903] 2 K. B. 100; *Adam* v. *Ward*, [1917] A. C. 309.

(*t*) See *Toogood* v. *Spyring*, 1 C. M. & R., p. 193; *Macintosh* v. *Dun*, [1908] A. C. 390, 398.

Art. 57.

privileged or not, *i.e.*, whether the communication is fairly warranted by the occasion and made without actual malice (*u*).

(5) If the occasion is privileged the onus is on the plaintiff to prove malice, *i.e.*, "actual malice" or "malice in fact" (*v*), which means in the given circumstances a wrong motive (*w*).

(6) A communication is made maliciously in fact if made from any indirect and wrong motive, such as any unjustifiable intention to inflict injury on the person defamed; but if a person make a statement believing it to be true he will not lose the protection of the privileged occasion, although he have no reasonable grounds for his belief; but excess of privilege may be evidence of malice (*x*).

(7) A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority is privileged if (1) published contemporaneously with such proceedings, and (2) not blasphemous or indecent (*y*).

This privilege is not excluded because the court lacks jurisdiction (*z*). But if the court itself prohibits publication of its proceedings no privilege is given to a violation of the prohibition (*a*). The sittings of licensing justices are not a court for this purpose (*b*).

(*u*) *Cooke* v. *Wildes*, 5 E. & B. 328; and *per* LOPES, L.J., in *Pullman* v. *Hill & Co.*, [1891] 1 Q. B. 529.

(*v*) *Clark* v. *Molyneux*, 3 Q. B. D. 237; *Jenoure* v. *Delmege*, [1891] A. C. 73; *Smith* v. *Streatfield*, [1913] 3 K. B. 764.

(*w*) *Nevill* v. *Fine Arts Insurance Co.*, [1895] 2 Q. B. 171.

(*x*) *Clark* v. *Molyneux*, 3 Q. B. D. 237; *Royal Aquarium Society* v. *Parkinson*, [1892] 1 Q. B. 434; *Adam* v. *Ward*, [1917] A. C. 309.

(*y*) Law of Libel Amendment Act, 1888, s. 3; *R.* v. *Evening News, Times* Newspaper, 11 February 1925, p. 5.

(*z*) *Kimber* v. *Press Association*, [1893] 1 Q. B. 65.

(*a*) Odgers on Libel, 5th ed., 314.

(*b*) *Attwood* v. *Chapman*, [1914] 3 K. B. 275.

Art. 57.

Comment.

(1) Lord BLACKBURN thus explains the nature of qualified privilege and malice: "A publication calculated to convey an actionable imputation is *primâ facie* a libel, the law, as it is technically said, implying malice, or, as I should prefer to say, the law being that the person who so publishes is responsible for the natural consequences of his act. But if the occasion is such that there was either a **duty**, though perhaps only of imperfect obligation, or a **right** to make the publication, it is said that the occasion rebuts the presumption of malice, but that malice may be proved; or I should prefer to say that he is not answerable for it so long as he is acting in compliance with that duty or exercising that right, and the burden of proof is on those who allege he was not so acting" (*c*).

Meaning of malice.

(2) "If," says BRETT, L.J., in *Clark* v. *Molyneux* (*d*), "the occasion is privileged it is so for some reason, and the defendant is only entitled to the protection of the privilege if he uses the occasion for that reason. He is not entitled to the protection if he uses the occasion for some indirect and wrong motive. If he uses the occasion to gratify his anger or his malice, he uses the occasion not for the reason which makes the occasion privileged, but for an indirect and wrong motive. . . . Malice does not mean malice in law, a term of pleading, but actual malice, that which is popularly called malice. If a man is proved to have stated that which he knew to be false, no one need inquire further. Everybody assumes thenceforth that he was malicious, that he did do a wrong thing from some wrong motive. So, if it be proved that out of anger or for some other wrong motive the defendant has stated as true that which he does not know to be true, and he has stated it whether it is true or not, recklessly, by reason of his anger or other motive, the jury may infer that he used the occasion not for the reason which justifies it, but for the gratification of his anger or other indirect motive."

Public duty.

Also where the plaintiff had given the widest currency to a statement reflecting on X., a servant of the Crown. The defendant, who was Secretary of the Department to

(*c*) *Capital and Counties Bank* v. *Henty*, 7 App. Cas. 741, 787.
(*d*) 3 Q. B. D. 237, 246.

Art. 57.

which X. belonged, sent to the Press for publication a letter containing defamatory statements about the plaintiff, refuting the latter's statements and vindicating X. It was held that the defendant's statement was made on a privileged occasion, and that in the circumstances the publication was not unreasonably wide and so the privilege was not lost (*e*).

Social and moral duty.

(3) In *Stuart* v. *Bell* (*f*), the plaintiff was a valet, and while he and his master were staying at Newcastle as the guests of the defendant, who was a magistrate and mayor of Newcastle, the chief constable showed the defendant a letter which he had received from the Edinburgh police stating that the plaintiff was suspected of having committed a theft at a hotel in Edinburgh which he had recently left, and suggesting a cautious inquiry. The defendant, without making any inquiry, told the plaintiff's master privately that there had been a theft at the hotel and that suspicion had fallen on the plaintiff. It was held that the defendant made the statement to the plaintiff's master in discharge of a moral or social, though not a legal, duty, and that the occasion was privileged. There being no evidence of malice, judgment was given for the defendant.

(4) So advice given in confidence, at the request of another and for his protection, is privileged ; and it seems that the presence of a third party makes no difference (*g*). But it seems doubtful whether a volunteered statement is equally privileged (*h*). Thus the character of a servant given to a person requesting it, is privileged (*i*) ; but a social or moral duty does not cover information furnished for reward by persons or bodies making a business of it (*j*), but inquiries and reports made for the members of a limited trade association are privileged (*k*).

(*e*) *Adam* v. *Ward*, [1917] A. C. 309.

(*f*) [1891] 2 Q. B. 341.

(*g*) *Taylor* v. *Hawkins*, 16 Q. B. D. 308; *Clark* v. *Molyneux*, 3 Q. B. D. 237.

(*h*) *Coxhead* v. *Richards*, 15 L. J. C. P. 278 ; *Fryer* v. *Kinnersly*, 33 L. J. C. P. 96 ; but see *Davies* v. *Snead*, L. R. 5 Q. B. 608.

(*i*) *Gardener* v. *Slade*, 18 L. J. Q. B. 334.

(*j*) *Macintosh* v. *Dun*, [1908] A. C. 390.

(*k*) *London Association for Protection of Trade* v. *Greenlands Limited*, [1916] 2 A C. 15.

Art. 57.

(5) The character of a candidate for an office, given to one of his canvassers, was held to be privileged (*l*).

Statements made by one having an interest to one having a corresponding interest.

(6) A privileged occasion arises, if the communication is of such a nature that it can be fairly said that he who makes it has an interest in making it, and that those to whom it is made have a corresponding interest in having the communication made to them. Thus, where a railway company dismissed one of their guards on the ground that he had been guilty of gross neglect of duty, and published his name in a monthly circular addressed to their servants, stating the fact of, and the reason for, his dismissal, it was held that the statement was made on a privileged occasion, and that the defendants were not liable. For, as Lord ESHER, M.R., said: "Can anyone doubt that a railway company, if they are of opinion that some of their servants have been doing things which, if they were done by their other servants, would seriously damage their business, have an interest in stating this to their servants? And how can it be said that the servants to whom that statement is made have no interest in hearing that certain things are being treated by the company as misconduct, and that if any of them should be guilty of such misconduct, the consequence would be dismissal from the company's service?" (*m*). So joint-owners of property, shareholders of a company and partners have this privilege in furtherance of their common interests (*n*).

Excess of privilege.

(7) However, imputations which, if made to persons having a corresponding interest, would be privileged in the absence of actual malice, cease to be so if spread broadcast. Thus, imputations circulated freely against another in order to injure him in his calling, however *bonâ fide* made, are not privileged. For instance, a clergyman is not privileged in slandering a schoolmaster about to start a school in his parish (*o*). So, the unnecessary transmission by a post office telegram of libellous matter, which would have been privileged if sent by letter, avoids the privilege (*p*). And where by the defendant's negligence

(*l*) *Cowles* v. *Potts*, 34 L. J. Q. B. 247.
(*m*) *Hunt* v. *Great Northern Rail. Co.*, [1891] 2 Q. B. 189
(*n*) *Quartz Hill Gold Mining Co.* v. *Beall* (1882), 20 Ch. D. 501.
(*o*) *Gilpin* v. *Fowler*, 9 Ex. 615.
(*p*) *Williamson* v. *Freer*, L. R. 9 C. P. 393.

Art. 57.

that which would be a privileged communication if made to A., is in fact placed in an envelope directed to B., whereby the defamatory matter is published to B., the defendant will be liable (*q*).

Incidental publication to persons not having interest.

(8) But the privilege is not lost when the defamatory statement is in the reasonable and ordinary course of being copied. So if a solicitor dictates to his clerk a letter, which would be privileged if written by him personally, the solicitor's privilege covers the publication for this purpose to his clerk ; and if a company writes to another company a defamatory statement of a third person (which would be privileged), the publication to the clerks who in the ordinary course copy the letter, is privileged (*r*).

Extracts from Parliamentary papers.

(9) Extracts from, and abstracts of, Parliamentary papers and reports are privileged if published *bonâ fide* and without malice (*s*). The reports and papers themselves, if published by authority of Parliament, are absolutely privileged, and actions brought in respect thereof may be stayed (*t*).

Reports of judicial proceedings.

(10) The publication without malice of a fair and accurate report of judicial proceedings before a properly constituted judicial tribunal, exercising its jurisdiction in open court, is privileged (*u*). This includes the publication of a charge by a Judge to a Grand Jury (*uu*). This is a common-law defence, open to all persons. It is not the same as the absolute privilege given by statute to reports in newspapers when published contemporaneously (*v*).

Reports of *quasi*-judicial proceedings.

(11) Reports of their proceedings published by *quasi*-judicial bodies *bonâ fide* and without any malice, are privileged. For instance, where the General Council of Medical Education and Registration (who are empowered by statute to strike the names of persons off the register of qualified

(*q*) *Hebditch* v. *MacIlwaine*, [1894] 2 Q. B. 54.

(*r*) *Boxsius* v. *Goblet Frères*, [1894] 1 Q. B. 842 ; *Edmondson* v. *Birch*, [1907] 1 K. B. 371 ; *Roff* v. *British & French, etc. Co.*, [1918] 2 K. B. 677.

(*s*) Parliamentary Papers Act, 1840 (3 & 4 Vict. c. 9,), s. 3 ; *Mangena* v. *Wright*, [1909] 2 K. B. 958.

(*t*) Parliamentary Papers Act, 1840, ss. 1, 2.

(*u*) *Kimber* v. *Press Association, Limited*, [1893] 1 Q. B. 65.

(*uu*) *R.* v. *Evening News, Times* Newspaper, 11 February 1925, p. 5.

(*v*) See *ante*, p. 123, para. 7.

Art. 57.

medical practitioners) struck off the plaintiff's name, and, in their annual published report, stated the circumstances which induced them to do so, it was held that in the absence of actual malice the publication was privileged (*w*).

Speeches at county councils, etc.

(12) So, too, there is qualified privilege for speeches made at meetings of district and county councils (*x*).

Newspaper reports of meetings, and publication of public notices, etc.

(13) By s. 4 of the Law of Libel Amendment Act, 1888 (*y*), it is enacted that a **fair and accurate report published in any newspaper of the proceedings of a public meeting,** or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a town council, board of guardians, or local authority, constituted under the provisions of any Act of Parliament, or of any meeting of any commissioners, Select Committees of either House of Parliament, and the publication *at the request* of any Government office or department, officer of state, commissioner of police or chief constable, of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously. But the protection intended to be afforded by that section is not available if the defendant has refused to insert, in the newspaper in which the matter complained of appeared, a reasonable explanation or contradiction by, or on behalf of, the plaintiff. Nor is it available to protect fair and accurate reports of statements made to the editors of newspapers by private persons as to the conduct of a public officer (*z*).

ART. 58.—*Apology.*

(1) At common law the fact that the defendant has apologised for having defamed the plaintiff is no defence.

(2) By statute the defendant **in any action for libel or slander** may prove **in mitigation of**

(*w*) *Allbutt* v. *General Council, etc.*, 37 W. R. 771.

(*x*) *Royal Aquarium Society* v. *Parkinson*, [1892] 1 Q. B. 431; *Pittard* v. *Oliver*, [1891] 1 Q. B. 474.

(*y*) 51 & 52 Vict. c. 64.

(*z*) *Davis* v. *Shepstone*, 11 App. Cas. 187.

damages that he made or offered an apology before the commencement of the action, or as soon afterwards as he had an opportunity, if the action was begun before he had an opportunity of doing so (*a*). Art. 58.

(3) In any action for libel contained in any newspaper or other periodical publication, it is a good defence that such libel was inserted without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant inserted in such newspaper a full apology, or, if the paper or periodical is published at intervals exceeding one week, that he offered to publish the apology in any newspaper or periodical selected by the plaintiff (*b*). With this defence there must be payment of money into court by way of amends, and *no other defence can be pleaded* (*c*).

NOTE.—If the defendant intends to give evidence of an apology in mitigation of damages, he must give notice with his defence (*d*). The Act of 1888 also enables a defendant, in the case of a libel *in a newspaper*, to give evidence in mitigation of damage that the plaintiff has recovered, or brought actions for, damages in respect of other libels to the same effect (*e*).

ART. 59.—*Slander of Title and Slander of Goods.*

(1) Slander of title is a false statement disparaging a person's title to property.

(2) Slander of goods is a false statement disparaging goods manufactured or sold by another.

(*a*) Libel Act, 1843 (6 & 7 Vict. c. 96), s. 1.
(*b*) *Ibid.*
(*c*) Libel Act, 1845 (8 & 9 Vict. c. 75), s. 2; R. S. C., Order XXII., r. 1.
(*d*) Libel Act, 1843, s. 1.
(*e*) Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 6.

Art. 59.

(3) The slander may be oral or in writing or print.

(4) An action for slander of title or slander of goods will lie if—

(i) The statement is false;

(ii) The publication is malicious;

(iii) The publication causes special damage (*f*).

NOTE.—(1) Actions of this kind are not properly actions for libel or slander. The cause of action is for damage wilfully and intentionally done without just occasion or excuse (*g*). The statement to be actionable need not be defamatory of the person (*h*), and it will be observed that even though the statement is in writing, it is not actionable without proof of special damage (*i*). There must also always be evidence of actual malice (*j*).

Special damage.

(2) In every case of this kind there must be proof of actual damage, *i.e.*, of actual and temporal loss, resulting from the slander. In the case of slander of goods, loss of custom and falling off in the sales is the usual kind of special damage. Where the slander is of title to property, real or personal, the special damage may be the diminished value of the property by reason of difficulty of selling or letting it (*k*).

Puffing one's own goods.

(3) For a person in trade to puff his own goods or proclaim their superiority over those of his rivals is not actionable, even though the statement is untrue and made maliciously, and causes damage to the rivals. A mere puffing of one's own goods, without active disparagement of a rival's goods, gives no ground of action, for the rival's goods have not been decried (*l*).

(*f*) *Lyne* v. *Nicholls* (1906), 23 T. L. R. 86; *Griffiths* v. *Benn* (1911), 27 T. L. R. 346.

(*g*) *Per* BOWEN, L.J., in *Ratcliffe* v. *Evans*, [1892] 2 Q. B. 524 [C. A.], at p. 527.

(*h*) *Ibid.*

(*i*) *White* v. *Mellin*, [1895] A. C. 154.

(*j*) *Greers Limited* v. *Pearman* (1922), 39 R. P. C. 417 [C. A.]; *British Railway Traffic Co.* v. *C. R. C.*, [1922] 2 K. B. 260; *Shapiro* v. *La Morta* (1923), 40 T. L. R. 201 [C. A.].

(*k*) *White* v. *Mellin*, *supra*; *Ratcliffe* v. *Evans*, *supra*.

(*l*) *White* v. *Mellin*, *supra*; *Alcott* v. *Millar's Karri Forests, Limited* (1905), 91 L. T. 722.

CHAPTER II.

OF MALICIOUS PROSECUTION.

ART. 60.—*General Rule.*

(1) Malicious prosecution of criminal proceedings consists in instituting unsuccessful criminal proceedings maliciously and without reasonable or probable cause (*a*).

(2) Malicious prosecution of criminal proceedings causing actual damage to the party prosecuted is a tort, for which he may maintain an action.

(3) Malicious prosecution will lie against those who maliciously, and without reasonable and probable cause, petition to have a person adjudicated bankrupt or attempt to have a company wound up (*b*).

(4) It is actionable to procure the arrest and imprisonment of a person by means of civil or criminal judicial process if such process be instituted maliciously and without reasonable or probable cause (*c*).

(5) Malicious execution against property. Where an action is brought maliciously, and without reasonable and probable cause, to issue

(*a*) See *Churchill* v. *Siggers*, 3 E. & B. 929, 937; *Johnson* v. *Emerson*, L. R. 6 Ex. 329; and *Quartz Hill Gold Mining Co.* v. *Eyre*, 11 Q. B. D. 674 [C. A.].

(*b*) *Quartz Hill Mining Co.* v. *Eyre, supra.*

(*c*) *Churchill* v. *Siggers* (1854), 3 E. & B. 929.

Art. 60. execution against the property of a judgment debtor malicious prosecution will lie (*d*).

Distinct from false imprisonment.

The distinction between malicious prosecution and false imprisonment has already been pointed out. Prosecution consists in setting a judicial officer in motion. Imprisonment consists in causing a person to be arrested or imprisoned without the intervention of a judicial officer.

Essentials.

To sustain this action the following essentials must exist :—

(1) Defendant must have actively instigated and carried on some proceedings of the classes above mentioned, and such proceedings must come before a judicial officer.

(2) The defendant must have acted maliciously (*i.e.*, with an improper motive and not to further the ends of justice).

(3) There must be a want of reasonable and probable cause.

(4) The proceedings must have ended in favour of the person proceeded against (unless of their nature this is not possible).

(5) Damage to the party proceeded against—in some cases this is implied.

ART. 61.—*Prosecution by the Defendant.*

The defendant must have instigated the prosecution or continued it, and need not be a party to it (*e*). But if the prosecution is taken by the authorities it is not enough that the defendant merely furnished information (*f*). And if criminal the proceedings need not be punishable by imprisonment in the first instance (*g*).

(*d*) *Churchill* v. *Siggers*, cf. *Clissold* v. *Cratchley*, [1910] 2 K. B. 244.

(*e*) *Johnson* v. *Emerson* (1871), L. R. 6 Ex. 329.

(*f*) *Fitzjohn* v. *Mackinder*, 9 C. B. (N.S.) 505 ; *Sewell* v. *N. T. Co.*, [1907] 1 K. B. 557.

(*g*) *Wiffen* v. *Bailey*, [1915] 1 K. B. 600.

Art. 61.

Illustrations. Mistake of magistrate.

(1) Thus, if a person *bonâ fide* lays before a magistrate a statement of facts, without making a specific charge of crime, and the magistrate erroneously treats the matter as a felony when it is in reality only a civil injury, and issues his warrant for the apprehension of the plaintiff, the defendant who has complained to the magistrate is not responsible for the mistake. For *he* has not instituted the prosecution, but the magistrate (*h*). But if a person goes before a magistrate and makes a specific charge against another, as by swearing an information that that other has committed a criminal offence, he is the person prosecuting, for he and not the magistrate has set the law in motion. So, too, if a person instructs a solicitor to prosecute, he is liable for the consequences if he does it maliciously and without reasonable and probable cause.

(2) It has been held that if a person acting *bonâ fide* swears an information before a magistrate, under s. 10 of the Criminal Law Amendment Act, 1885, that he has reasonable grounds for suspecting that a woman or girl is detained for immoral purposes, and thereupon the magistrate issues a search-warrant, the person swearing the information is not a prosecutor, as the magistrate acts judicially upon such information, and the decision of the magistrate that there is reasonable cause for suspicion protects the person giving the information (*i*).

ART. 62.—*Want of Reasonable and Probable Cause.*

(1) The onus of proving the absence of reasonable and probable cause for the prosecution rests on the plaintiff (*j*).

(2) The jury find the facts on which the question of reasonable and probable cause depends; but the judge determines whether those

(*h*) *Wyatt* v. *White*, 29 L. J. Ex. 193; *Cooper* v. *Booth*, 3 Esp. 135, 144.

(*i*) *Hope* v. *Evered*, 17 Q. B. D. 338.

(*j*) *Lister* v. *Perryman*, L. R. 4 H. L. 521; *Abrath* v. *North Eastern Rail. Co.*, 11 App. Cas. 247.

Art. 62.

facts do constitute reasonable and probable cause (*k*).

(3) No definite rule can be laid down for the exercise of the judge's determination (*l*); but the defendant will be deemed to have had reasonable and probable cause for a prosecution where (a) he took reasonable care to inform himself of the true facts; (b) he honestly, although erroneously, believed in his information (*m*), and (c) that information, if true, would have afforded a *primâ facie* case for the prosecution complained of (*n*).

Burden of proof.

Note, that in both malicious prosecution and false imprisonment the question of what amounts to reasonable and probable cause is for the judge. But there is this important difference, that in malicious prosecution it is for the plaintiff to prove the absence of reasonable and probable cause; whereas in false imprisonment, the imprisonment is *primâ facie* wrongful, and it is for the defendant, if he can, to prove that he had reasonable and probable cause.

Reasonable and probable cause defined.

In *Hicks* v. *Faulkner* (*o*), HAWKINS, J., says: "I should define reasonable and probable cause to be an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead an ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be first an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conviction; thirdly, such secondly mentioned belief must be based upon

(*k*) *Panton* v. *Williams*, 2 Q. B. 169 [Ex. Ch.]; *Cox* v. *Eng. Bank*, [1905] A. C. 168.

(*l*) *Lister* v. *Perryman*, L. R. 4 H. L. 521.

(*m*) *Heslop* v. *Chapman* (1853), 23 L. J. Q. B. 49.

(*n*) See *Abrath* v. *North Eastern Rail. Co.*, *ubi supra*.

(*o*) 8 Q. B. D. 167, at p. 171.

Art. 62.

reasonable grounds ; by this I mean such grounds as would lead any fairly cautious man in the defendant's situation so to believe ; fourthly, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused."

A man who makes a criminal charge against another, cannot absolve himself from considering whether the charge is reasonable and probable by delegating that question to an agent, even although that agent be presumably more capable of judging. Thus, the opinion of counsel as to the propriety of instituting a prosecution will not excuse the defendant if the charge was in fact unreasonable and improbable. For, as HEATH, J., said in *Hewlett* v. *Cruchley* (*p*), " it would be a most pernicious practice if we were to introduce the principle that a man, by obtaining the opinion of counsel, by applying to a weak man or an ignorant man, might shelter his malice in bringing an unfounded prosecution."

With regard to the amount of care which a prosecutor is bound to exercise before instituting a prosecution, it would seem that although he must not act upon mere tittle-tattle or rumour, or even upon what one man has told his immediate informant, without himself interviewing the first-mentioned man, yet where his immediate informant is himself cognizant of other facts, which, if true, strongly confirm the hearsay evidence, that will be sufficient to justify the prosecutor in acting, without first going to the source of the hearsay (*q*). But as circumstances are infinite in variety, it is quite impossible to lay down any guiding principle as to what steps a person ought reasonably to take for informing himself of the truth before instituting a prosecution.

ART. 63.—*Malice.*

Malice means improper motive, that is to say, any motive other than the desire of bringing a person to justice (*r*). Malice is a question of

(*p*) 5 Taunt. 277, at p. 283.
(*q*) *Lister* v. *Perryman*, L. R. 4 H. L. 521.
(*r*) *Abrath* v. *North Eastern Rail. Co.*, 11 App. Cas. 247.

Art. 63.

fact, and the absence of reasonable and probable cause does not necessarily infer malice (*s*); nor does the acquittal of the person proceeded against (*t*).

Illustrations.

Improper motives.

(1) If a person prosecutes another to prevent that other bringing actions against him (*u*), or to stop the mouth of a witness (*v*), or to frighten others and thereby deter them from committing depredations on the prosecutor's property (*w*), all these are indirect and improper motives which may constitute malice. So, too, if a man presents a petition to wind up a company with a view to recovering from it money paid by him for shares in the company (*x*).

(2) So, too, where one is assaulted justifiably, and institutes criminal proceedings for the assault; if in the opinion of the jury he commenced such proceedings knowing that he was wrong and had no just cause of complaint, malice may be presumed (*y*).

Honest mistake.

(3) In *Brown* v. *Hawkes* (*z*) it was pointed out that a prosecutor may act without reasonable and probable cause and yet not be malicious. Stupidity and malice are not the same thing; if the defendant honestly believed in the plaintiff's guilt, and there is no evidence that he was actuated by any improper motive, even though he had not taken care to inform himself of the facts, and had no reasonable and probable cause for prosecuting, yet he cannot be said to have acted maliciously. Honest belief rebuts the inference of malice from absence of reasonable and probable cause.

Bad memory.

(4) So, too, where the defendant has honestly and *bonâ fide* instituted the prosecution, he is not liable, although

(*s*) *Brown* v. *Hawkes*, [1891] 2 Q. B. 727; *Bradshaw* v. *Waterlow*, [1915] 3 K. B. 527.

(*t*) *Corea* v. *Peiris*, [1909] A. C. 549.

(*u*) *Leith* v. *Pope*, 2 W. Bla. 1327.

(*v*) *Haddrick* v. *Heslop*, 12 Q. B. 267.

(*w*) *Stevens* v. *Midland Rail. Co.*, 10 Ex. 352, 356.

(*x*) *Quartz Hill Co.* v. *Eyre* (1883), 11 Q. B. D. 687.

(*y*) *Hinton* v. *Heather*, 14 M. & W. 131.

(*z*) [1891] 2 Q. B. 718 [C. A.].

owing to a defective memory he has wrongly accused the plaintiff (*a*). Art. 63.

(5) It is now well established that an action of malicious prosecution will lie against a corporation (*b*). Malice in a corporation.

ART. 64.—*Failure of the Prosecution.*

It is necessary to show that the proceeding has terminated in favour of the plaintiff, if, from its nature, it be capable of such a termination (*d*). But the plaintiff does not need judicial determination of his innocence; the absence of judicial decision of his guilt is enough, *e.g.*, by discontinuance (*e*), or the quashing of a conviction on some technical ground (*f*).

(1) This rule, which at first sight appears somewhat harsh, is founded on good sense, and applies even where the result of the prosecution cannot be appealed (*g*). As CROMPTON, J., said, in *Castrique* v. *Behrens* (*h*), "there is no doubt on principle and on the authorities that an action lies for maliciously, and without reasonable and probable cause, setting the law of this country in motion, to the damage of the plaintiff. . . . But in such an action it is essential to show that the proceeding alleged to be instituted maliciously and without probable cause has terminated in favour of the plaintiff, if from its nature it be capable of such termination. The reason seems to be that, if in the proceeding complained of, the decision was against the plaintiff, and was still unreversed, it would not be consistent with the principles on which law is administered for another court, not being a court of appeal, to hold Explanation of reasons for rule.

(*a*) *Hicks* v. *Faulkner*, 8 Q. B. D. 167.
(*b*) *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423; and see Article 21.
(*d*) *Basèbè* v. *Matthews*, L. R. 2 C. P. 684.
(*e*) *Watkins* v. *Lee*, 5 M. & W. 270.
(*f*) *Johnson* v. *Emerson* (1871), L. R. 6 Ex. 329.
(*g*) *Basèbè* v. *Matthews*, L. R. 2 C. P. 684.
(*h*) 30 L. J. Q. B. 163, at p. 168.

Art. 64. that the decision was come to without reasonable and probable cause."

(2) Upon the same principle, an action for trespass by wrongfully causing execution to be issued under a judgment obtained by fraud or irregularity, will not lie until the judgment has been set aside. It is not competent to any person to aver anything contradicting or impeaching the judgment as long as it stands (*i*).

ART. 65.—*Damage.*

In order to support an action for malicious prosecution, it is necessary that some damage result to the plaintiff as the natural consequence of the prosecution complained of, but this will be presumed in cases which of their nature involve damage to reputation or possible loss of liberty or credit (*j*).

Damage need not be pecuniary.

The damage need not necessarily be pecuniary. "It may be either the damage to a man's fame, as if the matter he is accused of be scandalous, or where he has been put in danger to lose his life, or limb, or liberty; or damage to his property, as where he is obliged to spend money in necessary charges to acquit himself of the crime of which he is accused" (*k*).

(*i*) *Huffer* v. *Allen*, L. R. 2 Ex. 15; *Metropolitan Bank* v. *Pooley*, 10 App. Cas. 210.

(*j*) *Quartz Hill Co.* v. *Eyre*, *supra*; *Wiffen* v. *Bailey*, [1915] 1 K. B. 600.

(*k*) Mayne's Treatise on Damages, p. 345.

CHAPTER III.

OF MAINTENANCE.

ART. 66.—*Definition.*

(1) Maintenance is the unlawful assistance, by money or otherwise, proffered by a third person, to either party to a civil suit, to enable him to prosecute or defend it.

(2) Assistance of another in a suit is not unlawful if (a) the maintainer has a common interest in the action with the party maintained; or (b) the maintainer is actuated by motives of charity, *bonâ fide* believing that the person maintained is a poor man oppressed by a rich one.

(3) Special damage must be proved and the success of the maintained litigation is no bar to an action for maintenance (*a*).

Distinguished from malicious prosecution.

Maintenance differs from malicious prosecution in four respects :

(a) It applies to civil, not criminal proceedings.
(b) It consists not in instituting proceedings on one's own behalf, but in assisting another.
(c) Malice is not a necessary ingredient.
(d) It is not necessary to prove that the proceedings terminated in favour of the person who is the person who brings the action of maintenance.

Illustrations.

(1) Thus, in the well-known case of *Bradlaugh* v. *Newdegate* (*b*), the plaintiff, having sat and voted as a member

(*a*) *Oram* v. *Hutt*, [1914] 1 Ch. 107; *Neville* v. *London Express Newspaper, Limited*, [1919] A. C. 368.
(*b*) 11 Q. B. D. 1.

Art. 66.

of Parliament without having made and subscribed the oath, the defendant, who was also a member of Parliament, procured C. to sue the plaintiff for the penalty imposed for so sitting and voting. C. was a person of insufficient means to pay the cost in the event of the action being unsuccessful :—*Held*, that the defendant and C. had no common interest in the result of the action for the penalty, and that the conduct of the defendant in respect of such action amounted to maintenance, for which he was liable to be sued by the plaintiff. The plaintiff accordingly recovered all the costs he had incurred in the first action.

Common interest.

(2) But, on the other hand, where there is a common interest believed on reasonable grounds to exist, assistance in bringing or defending an action is justifiable. A master for a servant, or a servant for a master, an heir, a brother, a son-in-law, a brother-in-law, a fellow-commoner defending rights of common, or a landlord defending his tenant in a suit for tithes (*c*), and an Assurance Company defending an action for its assured.

(3) So, if a number of proprietors of land subscribe to defend an action relating to the land of one in the reasonable belief that they have a common interest in the result, that is not maintenance (*d*).

Interest arising out of charity.

(4) The other exception is where a rich man gives money to a poor man to maintain a suit out of charity. And the motive is none the less charitable within this exception because it is induced by common religious sympathy, as when the Kensit Crusade Committee assisted a poor man in taking proceedings to get a child removed from a home to the religious principles of which the committee objected (*e*). And this exception is applicable notwithstanding that if the person advancing the money had made full inquiry, he would have ascertained that there was no reasonable or probable ground for the proceedings which he assisted (*f*).

(*c*) *Per* COLERIDGE, C.J., in *Bradlaugh* v. *Newdegate*, 11 Q. B. D., at p. 11.

(*d*) *Findon* v. *Parker*, 11 M. & W. 675. See, too, *British Cash and Parcel Conveyers, Limited* v. *Lamson Store Service Co.*, [1908] 1 K. B. 1006 [C. A.], and *Alabaster* v. *Harness*, [1895] 1 Q. B. 339 [C. A.].

(*e*) *Holden* v. *Thompson*, [1907] 2 K. B. 489.

(*f*) *Harris* v. *Brisco*, 17 Q. B. D. 504 [C. A.].

Art. 66.

Special damage.

(5) In a recent case the plaintiff contemplated laying out land on the south coast as a building estate and offered a prize for a suitable name for the intended resort. He offered also consolation prizes of freehold building plots, subject to the payment by the winners of these of three guineas for the conveyance of their respective plots to them. Defendants in their newspaper alleged the competition was not *bonâ fide*, and that the prizes really were sales of the land at a profit. Defendants offered to take legal proceedings at their own expense on behalf of consolation prize winners to recover the three-guinea fees. Two actions were brought by defendants' solicitors in this behalf and were successful. Plaintiff sued defendants for libel and maintenance. No special damage was shown by the plaintiff. It was held: (1) The success of the maintained action did not deprive plaintiff of his right of action for maintenance; (2) but his failure to prove special damage caused his action to fail (*g*).

(*g*) *Neville* v. *London Express Newspaper, Limited*, [1919] A. C. 368.

CHAPTER IV.

OF INJURY TO SERVANTS AND OF HARBOURING AND SEDUCTION.

ART. 67.—*Enticing and Harbouring.*

EVERY person is liable to an action for damages who wilfully assaults or entices away another's wife or servant, or knowingly harbours a wife or a servant who has wrongfully quitted his or her master's service (*a*).

The gist of the action for enticing away or harbouring a wife or servant is loss of society of the wife or of the services of the servant. Formerly actions were sometimes brought for beating a wife or servant, whereby the husband or master lost the society or services of his wife or servant. Actions of this sort are now rarely brought.

It seems that in the case of a **servant** (where the action is not brought by a parent or other person *in loco parentis*), the only damages recoverable are the actual pecuniary loss which the plaintiff suffers (*b*).

A master whose servant is injured by the negligence of the defendant may, it seems, sue for damages for loss of service, unless the injuries have caused the immediate death of the servant (*c*).

(*a*) *Winsmore* v. *Greenbank*, Willes, 577; *Smith* v. *Kaye*, 20 T. L. R. 261; *Blake* v. *Lanyon*, 6 Term Rep. 221.

(*b*) *McKenzie* v. *Hardinge*, 23 T. L. R. 15. In this case the defendant seduced a servant of the plaintiff so that she became pregnant and the plaintiff lost her services; *Frederick Wilkins & Bros., Limited* v. *Weaver*, [1915] 2 Ch. 322—a case of knowingly harbouring a servant during a breach of contract of service.

(*c*) *Berringer* v. *Great Eastern Rail. Co.*, 4 C. P. D. 163; *Clark* v. *London General Omnibus Co.*, [1906] 2 K. B. 648 [C. A.]. See *ante*, p. 71, note (*t*).

Art. 68.

ART. 68.—*The ordinary Action for Seduction.*

(1) A parent may bring an action for damages against one who seduces his daughter whilst she is in his service, whereby he is deprived of her services.

(2) The plaintiff must prove (a) that the female seduced was at the time of the seduction in his service, actual or constructive (*d*); (b) that he lost her services, either by reason of her pregnancy and confinement, or by reason of her being kept away by the persuasion of the defendant (*e*).

(3) A daughter is constructively in her father's service if she lives at home and performs in fact any slight services (*f*).

(4) A daughter under the age of twenty-one, unmarried and not in other service, is presumed to be in the service of her parents (*g*).

Foundation of action loss of service.

The ordinary action for seduction is founded on the action for assaulting or enticing away a servant. Accordingly, it is always necessary to prove that the female seduced was in the service of the plaintiff, and that in consequence of the seduction the plaintiff lost her services. The substance of the action, however, is not the loss of services, but the injury done to the female seduced and to the honour of her family. She cannot bring an action herself, for she must have given her consent to the connexion, and *volenti non fit injuria*. Hence the action must be brought by someone who has been deprived of her services by the wrongful act of the seducer.

(*d*) *Davies* v. *Williams*, 10 Q. B. 725; *Peters* v. *Jones*, [1914] 2 K. B. 781.

(*e*) *Hedges* v. *Tagg*, L. R. 7 Ex. 283; *Evans* v. *Walton*, L. R. 2 C. P. 615.

(*f*) *Peters* v. *Jones*, *supra*.

(*g*) *Harris* v. *Butler*, 2 M. & W. 539, 542; *Terry* v. *Hutchinson* (1868), L. R. 3 Q. B. 599.

Art. 68.

Accordingly, the plaintiff in an action for seduction must always prove—

(i) **That the female seduced was in his service, actual or constructive, at the time of the seduction.**

(ii) **That by reason of her confinement or otherwise, he was deprived of her services.**

Who can bring action.

The action may be brought not only by a parent, but by anyone *in loco parentis*, such as a person who has adopted the girl as his daughter, or a brother or an aunt with whom the girl makes her home (*h*). It is not necessary that the female seduced should have been under a contract of service with the plaintiff, it is enough that she lived in his house and in fact performed services.

Illustrations. Evidence of service.

(1) Thus, the plaintiff's daughter was in service as a governess, and was seduced by the defendant whilst on a three days' visit, with her employer's permission, to the plaintiff, her widowed mother. During her visit she gave some assistance in household duties. At the time of her confinement she was in the service of another employer, and afterwards returned home to her mother :—*Held*, that there was no evidence of service at the time of the seduction. And by KELLY, C.B., and MARTIN and BRAMWELL, BB., that the action must fail also on the ground that *the confinement* did not take place whilst the daughter was in the plaintiff's service (*i*).

(2) When a girl was seduced whilst living at home with her father and mother, but the father died before her confinement, it was held that the widowed mother could not bring an action against the seducer, as the girl was not in her service at the time of the seduction, but in that of the father (*k*).

(3) In the case of a daughter living at home, such small

(*h*) See note to *Fores* v. *Wilson*, 1 Peake, 55, 56 ; *Murray* v. *Fitzgerald*, [1906] 1 I. R. 254 [C. A.].

(*i*) *Hedges* v. *Tagg*, L. R. 7 Ex. 283 ; cf. *Terry* v. *Hutchinson* (1868), L. R. 3 Q. B. 599.

(*k*) *Hamilton* v. *Long*, [1903] 2 I. R. 407 ; affirmed, [1905] 2 I. R. 552 [C. A.].

Art. 68.

services as milking, or even making tea, are sufficient evidence of service (*l*).

(4) Where a girl was in the defendant's service when seduced by him, but was allowed to go home for an afternoon and evening twice a week, and on those occasions assisted in household work and in looking after the other children, it was held that the relationship of master and servant did not exist between the plaintiff and the daughter so as to support an action for seduction (*m*).

(5) And where the daughter at the time of the seduction is acting as housekeeper to another person, the action will not lie (*n*); not even when she partly supports her father (*o*).

Daughter under age.

(6) The plaintiff's daughter, *being under age*, left his house and went into service. After nearly a month, the master dismissed her at a day's notice, and the next day, on her way home, the defendant seduced her. It was held, that as soon as the real service was put an end to by the master, whether rightfully or wrongfully, the girl intending to return home, the right of her father to her services revived, and there was, therefore, sufficient constructive service to maintain an action for the seduction (*p*).

(7) When the child is only absent from her father's house on a temporary visit, there is no termination of her services, provided she still continues, in point of fact, one of his own household (*q*).

Action by brother.

(8) When an orphan girl, who lived on a farm with her younger brother and managed the house for him, was seduced, it was held that there was sufficient relation of master and servant to enable him to bring an action and recover general damages against the seducer (*r*).

(*l*) *Bennett* v. *Allcott*, 2 Term Rep. 166; *Carr* v. *Clarke*, 2 Chit. R. 260.

(*m*) *Whitbourne* v. *Williams*, [1901] 2 K. B. 722 [C. A.]. See also *Thompson* v. *Ross*, 5 H. & N. 16.

(*n*) *Dean* v. *Peel*, 5 East, 45.

(*o*) *Manley* v. *Field*, 29 L. J. C. P. 79.

(*p*) *Terry* v. *Hutchinson*, L. R. 3 Q. B. 599.

(*q*) *Griffiths* v. *Teetgen*, 15 C. B. 344.

(*r*) *Murray* v. *Fitzgerald*, [1906] 2 I. R. 254 [C. A.].

ART. 69.—*Misconduct of Parent.* Art. 69.

If a parent has introduced his daughter to, or has encouraged, profligate or improper persons, or has otherwise courted his own injury, he has no ground of action if she be seduced.

Thus, where the defendant was received as the daughter's suitor, and it was afterwards discovered by the plaintiff that he was a married man, notwithstanding which he allowed the defendant to continue to pay his addresses to his daughter on the assurance that the wife was dying, and the defendant seduced the daughter: it was held, that the plaintiff had brought about his own injury, and had no ground of action (*s*). Reddie v Scoolt

ART. 70.—*Damages in ordinary Action for Seduction.*

(1) In cases of seduction, in addition to the actual damage sustained, including any expenses incurred through the daughter's illness, damages may be given for the loss of the society and comfort of the daughter who has been seduced, and for the dishonour, anxiety, and distress which the plaintiff has suffered (*t*).

(2) Where more than ordinarily base methods have been employed by the seducer, the damages may be aggravated. On the other hand, the defendant may show, in mitigation of damages, the loose character of the girl seduced.

(3) The right of action is barred after six years (*u*).

(*s*) *Reddie* v. *Scoolt*, 1 Peake, 240.

(*t*) *Bedford* v *McKowl*, 3 Esp. 119: *Terry* v. *Hutchinson*, L. R. 3 Q. B. 599.

(*u*) 21 Jac. I. c. 16, s. 3.

Art. 70.

(1) Thus, as was observed by Lord ELDON, in *Bedford* v. *McKowl* (*x*), "although in point of form the action only purports to give a recompense for loss of service, we cannot shut our eyes to the fact that it is an action brought by a parent for an injury to her child, and the jury may take into their consideration all that she can feel from the nature of the loss. They may look upon her as a parent losing the comfort as well as the service of her daughter, in whose virtue she can feel no consolation; and as the parent of other children whose morals may be corrupted by her example." Damages given by a jury for this kind of tort will, therefore, rarely be reduced by the court on the ground that they were excessive.

Aggravation of damages.

(2) *A fortiori* will this be the case where the seducer has made his advances under the guise of matrimony. As was said by WILMOT, C.J., in a case of that character: "If the party seduced brings an action for breach of promise of marriage (*y*), so much the better. If much greater damages had been given, we should not have been dissatisfied therewith, the plaintiff having received this insult in his own house, where he had civilly treated the defendant, and permitted him to pay his addresses to his daughter" (*z*).

Mitigation of damages.

(3) On the other hand, the defendant may, in mitigation of damages, call witnesses to prove that they have had sexual intercourse with the girl previously to the seduction (*a*). And, generally, the previous loose or immoral character of the girl seduced is ground for mitigation; as, for instance, the using of immodest language or submitting herself to the defendant under circumstances of extreme indelicacy.

(*x*) 3 Esp. 119.

(*y*) The loss caused to the plaintiff by *breach* of a *promise* to marry, however, is not to be taken into consideration, for that is a civil injury to *her* and not to the father.

(*z*) *Tullidge* v. *Wade*, 3 Wils. 18.

(*a*) *Eager* v. *Grimwood*, 16 L. J. Ex. 236; *Verry* v. *Watkins*, 7 C. & P. 308.

CHAPTER V.

TRADE MOLESTATION.

ART. 71.—*Inducing Breach of Contract.*

A PERSON who knowingly and without lawful justification induces another to break a subsisting contract with a third person whereby that third person suffers damage, commits a tort at common law (*a*).

Comment.

This proposition of law was established after a good deal of controversy by the cases cited in the note. It was at one time supposed that though an action lay for inducing a menial servant to break his contract of service, the rule did not apply to other contracts; but by successive stages the rule has been extended to all contracts, such as a contract with an opera singer, or a contract to sell goods (*b*).

The rule is confined to cases where the defendant has induced someone to break a contract.

The Trade Disputes Act, 1906.

The Trade Disputes Act, 1906, s. 3, provides: "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or labour as he wills."

This section gives no protection to persons who induce others to misapply their master's monies (*c*), or who induce

(*a*) *Lumley* v. *Gye*, 2 E. & B. 216, applied in *Jasperson* v. *Dominion Tobacco Co.*, [1923] A. C. 709; *Temperton* v. *Russell*, [1893] 1 Q. B. 715 [C. A.]; *Quinn* v. *Leathem*, [1901] A. C. 510.

(*b*) See the Illustrations.

(*c*) *Royal London Mutual Insurance Society* v. *Williamson* (1921), 37 T. L. R. 742.

Art. 71.

breaches of contract by **threats** or **violence,** for then there is some other ground of action besides the ground that "it induces some person to break a contract." But it changes the law in this respect, that if the inducement to break a contract be **without threat or violence,** then this is no longer actionable if it is done "in contemplation or furtherance of a trade dispute" (*f*). The fact that trade union officials take part in a dispute does not make it a trade dispute (*g*).

Examples

Lumley v. *Gye.*

(1) The plaintiff agreed with a famous singer to perform in an opera. The defendant, a rival manager, offered the singer a large sum of money to break her contract with the plaintiff and sing for him. Assuming that there was *an actual contract of service*, a breach of which the defendant had knowingly brought about, and the plaintiff had thereby suffered damage, there was a good cause of action (*h*).

Temperton v. *Russell.*

(2) In order to induce the plaintiff to carry on his trade in a particular manner, agreeably to the wishes of a trade union, the defendants induced B. to break a contract he had with the plaintiff for the supply of building materials. The plaintiff thereby suffered damage and the defendants were held liable (*i*).

Procuring breach of contract by fraud.

(3) The plaintiffs sold their goods wholesale to factors who entered into agreements with them not to sell them to dealers on the plaintiffs' "suspended list." The defendants employed agents to obtain the plaintiffs' goods for them from these factors by falsely representing that they were independent dealers and dealing in fictitious names. By these fraudulent means the defendants induced the

(*f*) *Per* Lord LOREBURN in *Conway* v. *Wade*, [1909] A. C. 506, 511. As to what is a "trade dispute," see that case and the definition in the Trade Disputes Act, 1906, s. 5 (3); *Hodges* v. *Webb*, [1920] 2 Ch. 70, approved in *White* v. *Riley*, [1921] 1 Ch. 1 [C. A.], and *Fowler* v. *Kibble*, [1922] 1 Ch. 487 [C. A.].

(*g*) *Larkin* v. *Long*, [1915] A. C. 814.

(*h*) *Lumley* v. *Gye*, 2 E. & B. 216, followed and approved by the Court of Appeal in *Bowen* v. *Hall*, 6 Q. B. D. 333 [C. A.], and by the House of Lords in *Quinn* v. *Leathem*, [1901] A. C. 495; and by the Privy Council in *Jasperson* v. *Dominion Tobacco Co.*, [1923] A. C. 709.

(*i*) *Temperton* v. *Russell*, [1893] 1 Q. B. 715 [C. A.].

factors to break their agreements with the plaintiffs, and as they had interfered, without justification, with the contractual relations between the plaintiffs and the factors, and the plaintiffs had thereby suffered damage, they had a cause of action against the defendants (*k*). Art. 71.

Art. 72.—*Conspiracy, and Molestation by Inducements not to Work, not to Employ, and not to Trade with.*

(a) One who intentionally and without sufficient justification, by threats, intimidation, molestation or violence, induces persons not to work for or trade with another whereby that other suffers damage, commits a tort at common law (*l*).

(1) The plaintiffs were endeavouring to trade with natives on the coast of Calabar. The defendant fired a cannon at the natives in order to drive them away and thereby deterred them from trading with the plaintiffs. This was held actionable (*m*). Examples. Molestation.

(2) The plaintiff was a stone-mason. The defendant was held liable for threatening his workmen and customers with mayhem and suits so that they desisted from doing business with the plaintiff (*n*).

(b) Combination to advance self-interest or to injure another's interests by acts which those combining are entitled by law to do individually, is not actionable at the suit of a party whose interests are thereby injured. And combination, even to harm another by the exercise in a lawful manner of a right which is a legal right

(*k*) *National Phonograph Co.* v. *Edison Bell Consolidated Phonograph Co.*, [1908] 1 Ch. 335 [C. A.].

(*l*) *Quinn* v. *Leathem*, [1901] A. C. 495; *Pratt* v. *British Medical Association*, [1919] 1 K. B. 244.

(*m*) *Tarleton* v. *M'Gawley*, 1 Peake, 205.

(*n*) *Garret* v. *Taylor*, Cro. Jac. 567.

Art. 72.

of each person so combining, gives no ground of action to the party injured (*o*).

No illegal act.

No illegal means.

Allen v. *Flood.*

(3) The plaintiffs were shipwrights employed "for the job" on the repairs to the woodwork of a ship, but were liable to be discharged at any time. Some ironworkers who were employed on the ironwork of the ship objected to the plaintiffs being employed, on the ground that they had previously worked at ironwork on a ship for another firm, the practice of shipwrights working on iron being resisted by the trade union of which the ironworkers were members. The defendant, who was a delegate of the union, was sent for by the ironworkers, and informed that they intended to leave off working. *The defendant then warned the employers that, unless the plaintiffs were discharged, all the ironworkers would be called out on strike*, and that wherever the shipwrights were employed the iron men would cease work. The employers accordingly discharged the plaintiffs, *i.e.*, lawfully terminated their engagement and refused to re-engage them. They broke no contract in so doing. The plaintiffs thereupon sued the defendant, and the jury found that he had maliciously induced the employers to "discharge" the plaintiffs, and gave damages. The House of Lords, however, by a majority, dismissed the action, on the ground that the defendant had violated no legal right of the plaintiffs, and done no unlawful act in merely *warning* the employers of the consequences of their continuing to employ the plaintiffs; and that therefore his conduct, however malicious or bad his motive might be, was not actionable (*o*).

Note that no threats, violence or intimidation were used by the defendant. He only warned them of danger which would result from continuing to employ the plaintiffs.

(c) In the presence or absence of combination where illegal means are employed either to advance the lawful trade or other interests of

(*o*) *Mayor of Bradford* v. *Pickles*, [1895] A. C. 598, 601; *Mogul S.S. Co.* v. *McGregor, Gow & Co.*, [1892] A. C. 25; *Allen* v. *Flood*, [1898] A. C. 1; *Davies* v. *Thomas*, [1920] 2 Ch. 189; *Thompson* v. *British Medical Association*, [1924] A. C. 764; *Sorrell* v. *Smith*, [1924] 1 Ch. 506; *Reynolds* v. *Shipping Federation*, [1924] 1 Ch. 28.

the person or persons employing such means or to injure the interests of another, the employment of such means gives the injured party a right of action (*p*). Art. 72.

(d) No combination can be a conspiracy unless it is an agreement between two or more persons to do an unlawful act or to effect a lawful purpose by unlawful means, and the only way of reconciling the authorities seems to lie in the view that where an act is lawful if done by one person though with intent to injure another and not for promotion of trade interests, yet if done in combination such combination amounts to the use of unlawful means (*pp*). Conspiracy.

(4) In *Quinn* v. *Leathem* the defendants were guilty of an illegal act in that they used threats to and coercion of the plaintiff's customers and thereby infringed the liberty of action of these latter (*q*), and similarly in *Pratt* v. *British Medical Association* the defendants were guilty of illegal acts in using coercion of their own members by threat of ostracism of each member (similar to that inflicted on the plaintiffs) who failed to comply with the dictated policy of the Association.

(e) The Trade Disputes Act, 1906, s. 2, provides: "It shall be lawful for one or more persons acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining Trade Disputes Act. Picketing.

(*p*) *Quinn* v. *Leathem*, [1901] A. C. 495; *Pratt* v. *British Medical Association*, [1919] 1 K. B. 244; see Cohen's Memorandum to the Report of the Trades Disputes Commission, 1906.

(*pp*) *Gregory* v. *Duke of Brunswick* (1843), 1 C. & K. 24; *Sweeney* v. *Coote*, [1907] A. C. 221.

(*q*) *Quinn* v. *Leathem*, [1901] A. C. 495; see judgment of Lord LINDLEY, at p. 539.

Art. 72. or communicating information or of peacefully persuading any person to work or abstain from working."

ART. 73. *Unfair Competition. Passing Off.*

(1) No man is entitled to carry on his business in such a way as to represent that it is the business of another or is in any way connected with the business of another except by the use of his own name (*qq*).

(2) Nobody has any right to represent his goods as the goods of someone else (*r*).

(3) No one who has in his hands the goods of *another* of a particular class or quality has a right to represent these goods to be goods of that other but of a different quality or belonging to a different class (*rr*).

Comment. It is the invasion of property in the business or goodwill that forms the subject of a passing off action, and actions of this kind must not be confused with actions for infringement of trade marks, the right to enjoy which is statutory. The wrongs we are now discussing are torts at common law for which an action can be brought for damages (*s*), though the remedy sought is generally an injunction in the Chancery Division.

Passing off goods as those of another. Where a trader gets up his goods as those of another it is not necessary to prove that he does so fraudulently with intent to deceive, or that anyone is in fact deceived (*ss*). "All that it is necessary to prove is that the defendants' goods are so marked, made up, or described by them as to be calculated to deceive ordinary purchasers, and to lead

(*qq*) *Rodgers* v. *Rodgers* (1924), 41 R. P. C. 277.

(*r*) *Rodgers* v. *Rodgers*, *supra*; *Spalding* v. *Gamage*, (1915) 84 L. J. Ch. 449 [H. L.], *per* Lord PARKER.

(*rr*) *Spalding* v. *Gamage*, *supra*.

(*s*) *Blofield* v. *Payne*, 4 B. & Ad. 410; *Rodgers* v. *Nowill*, 5 C. B. 109; *Reddaway* v. *Banham*, [1896] A. C. 199.

(*ss*) *Warwick* v. *New Motor Co., Ltd.*, [1910] 1 Ch. 248; *Ewing* v. *Buttercup Margarine Co.*, [1917] 2 Ch. 1; *Pullman* v. *Pullman* (1919), 36 R. P. C. 240.

Art. 73.

them to mistake the defendants' goods for the goods of the plaintiffs," even though the description is true as to the nature of the goods or their locality of manufacture (*t*), for "no man can have any right to represent his goods as the goods of another person" (*u*).

Use of another's name.

When a person assumes a name which does not belong to him he will be restrained from doing so if the result would be calculated to deceive (*x*).

Use of one's own name.

Generally speaking, a man may use his own name, even though his goods may in consequence be mistaken for those of another. "A man is entitled to carry on his business in his own name so long as he does not do any more than that to cause confusion with the business of another and so long as he does it honestly" (*y*). And a man may even be restrained from using his own name, if it is clearly proved that he is using it with the **fraudulent intent** of attracting the custom of a rival, but not otherwise. For *primâ facie* a man has a right to use his own name (*y*).

Illustrations.

Get-up of goods.

(1) Actions have been brought successfully by an inventor of metallic hones against another trader who wrapped his in envelopes resembling the plaintiff's (*a*); by makers of camel-hair belting against defendants who made similar belting, which they described quite truly but using the name used by the plaintiffs, *i.e.*, camel-hair belting. It was held that the term "camel-hair belting" had come to indicate to the public the plaintiffs' article, and therefore such use by defendants in fact deceived the public, and an injunction to cease such description was

Descriptive terms.

Secondary meaning.

(*t*) *Per* LINDLEY, L.J., in *Reddaway* v. *Bentham Hemp Spinning Co.*, [1892] 2 Q. B. 639 [C. A.], at p. 644; "*Singer*" *Machine Manufacturers* v. *Wilson*, 3 App. Cas. 376; *Montgomery* v. *Thompson*, [1891] A. C. 217; *Edge* v. *Niccolls*, [1911] A. C. 693.

(*u*) *Per* HALSBURY, L.C., in *Birmingham Vinegar Brewery Co.* v. *Powell*, [1897] A. C. 710, at p. 711, quoting from TURNER, L.J., in *Burgess* v. *Burgess*, 3 De G. M. & G. 896.

(*x*) *F. Pinet et Cie.* v. *Maison Louis Pinet, Limited*, [1898] 1 Ch. 179; *John Bright & Bros., Ltd.* v. *John Bright (Outfitters), Ltd.* (1922), 67 Sol. Jo. 112 [C. A.].

(*y*) *Rodgers* v. *Rodgers* (1924), 41 R. P. C., at p. 291; and see also *Turton* v. *Turton*, 42 Ch. D. 128 [C. A.]; *Burgess* v. *Burgess*, 3 De G. M. & G. 896.

(*a*) *Blofield* v. *Payne*, 4 B. & Ad. 410.

Art. 73.

granted against the defendants (*b*); and by brewers at Stone of a drink known as "Stone Ale," against another firm of brewers who also manufactured ale at Stone and sold it as "Stone Ale" (*c*).

Similarity of name.

(2) Though the plaintiffs had for many years carried on business as steel manufacturers under the style of Thomas Turton & Sons, it was held they could not prevent a firm consisting of John Turton and his two sons from carrying on a similar business under the name of John Turton & Sons, that being a true description of the firm, and there being no evidence of any attempt to deceive the public (*d*); but where a person assumed as his name the name of a manufacturer of boots and shoes with the object of making boots and shoes and passing them off as those of the old-established firm, he was restrained from using the name in connection with the sale of boots and shoes (*e*).

(*b*) *Reddaway* v. *Banham*, [1896] A. C. 199. Note the effect of the Trade Marks Act, 1919, s. 6.

(*c*) *Montgomery* v. *Thompson*, [1891] A. C. 217.

(*d*) *Turton* v. *Turton*, 42 Ch. D. 128 [C. A.].

(*e*) *F. Pinet et Cie* v. *Maison Louis Pinet, Limited*, [1898] 1 Ch. 179; and see the still stronger case where the plaintiff had no place of business here yet was granted an injunction (*Poiret* v. *Poiret (Jules), Limited, & Nash* (1920), 37 R. P. C. 177).

CHAPTER VI.

OF DECEIT OR FRAUD.

Art. 74.—*Definition of Fraud.*

Fraud consists of a false representation made with intent to deceive and to be acted upon, and either known by the party making it to be false, or made without belief in its truth, or recklessly without caring whether it be true or false.

The general rule of law is, that mere silence with regard to a material fact will not give a right of action for fraud, and no action can be maintained on deceit which does not in fact deceive (*a*).

Essentials of actionable deceit.

The essentials of actionable deceit are : (1) A false statement of fact ; (2) made recklessly or with knowledge of its falsity ; (3) with intent plaintiff shall act on it (*b*) ; (4) that plaintiff has so acted (*c*) ; (5) that plaintiff thereby suffered damage (*cc*).

When silence amounts to fraud.

Though it is generally true to say that there must be active fraud, nevertheless there may be statements of a fragmentary character, true as far as they go, but so distorted as to convey a wholly erroneous impression ; and statements of that kind made with intent to deceive may amount to fraudulent statements although literally true. "Supposing you state a thing partially, you make as much a false statement as if you misstated it altogether. Every word may be true, but if you leave out something

(*a*) *Horsfall* v. *Thomas* (1862), 1 H. & C. 90.

(*b*) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377 ; *Tackey* v. *McBain*, [1912] A. C. 186.

(*c*) *Smith* v. *Chadwick*, L. R. 9 App. Cas. 187.

(*cc*) *Derry* v. *Peek* (1889), 14 App. Cas. 337 ; and see also *Nocton* v. *Ashburton*, [1914] A. C. 932.

Art. 74.

which qualifies it, you make a false statement. For instance, if pretending to set out the report of a surveyor, you set out two passages in his report and leave out a third passage which qualifies them, that is an actual misstatement" (*d*).

Actual fraud necessary.

The leading case of *Derry* v. *Peek* (*e*) establishes that, in an action of deceit, the plaintiff must prove actual fraud; he may prove it by showing that the false representation was made knowingly, or without belief in its truth, or recklessly, not caring whether it was true or false. But an untrue statement made through carelessness, and **without reasonable ground for believing it to be true, does not amount to fraud**; and if the jury finds that it was made in the *honest belief* that it was true, the defendant will not be liable in an action of deceit, however unreasonable his belief may have been. **No amount of negligence can amount to fraud** (*e*).

(1) The false statement must be of a fact (*f*) not a mere promise; but a statement of opinion if wilfully false is actionable as a tort (*g*).

(2) It must be made recklessly, that is without an honest belief in the truth of the statement (*h*), but not merely negligently (*i*).

(3) The right of action is confined to the person intended to act on the statement (who need not be the person to whom the statement is made (*f*)), others must act at their own risk. But purchasers of shares relying on a prospectus have a good cause of action (*j*).

(*d*) *Per* JAMES, L.J., in *Arkwright* v. *Newbold*, 17 Ch. D. 301, at p. 318; *Peek* v. *Gurney*, L. R. 6 H. L., at p. 403.

(*e*) 14 App. Cas. 337; and see *Le Lievre* v. *Gould*, [1893] 1 Q. B. 491 [C. A.]; *Weir* v. *Bell*, 3 Ex. D. 238.

(*f*) *Langridge* v. *Levy*, 2 M. & W. 519.

(*g*) *Anderson* v. *Pacific Insurance Co.* (1872), L. R. 7 C. P. 69.

(*h*) *Derry* v. *Peek*, *supra*.

(*i*) *Le Lievre* v. *Gould*, *supra*; *Glasier* v. *Rolls*, 62 L. T. 133 [C. A.].

(*j*) *Andrews* v. *Mockford*, [1896] 1 Q. B. 372; *Richardson* v. *Silvester* (1873), L. R. 9 Q. B. 34.

Art. 74.

(4) It is essential that the plaintiff be influenced by the untrue statement (*k*) and that he acted as a result of it (*l*). But no action lies if the plaintiff is not in fact deceived (*m*), though the fact that the plaintiff has been negligent in so acting on the untrue statement is no defence (*n*).

(5) The cause of action is not the deceit but the detriment suffered by the plaintiff, hence damage must be proved (*o*).

No intent to benefit.

(6) The false statement need not be made with intent to benefit the defendant. It is sufficient that it was made with intent to deceive, and was followed by loss which a reasonable man might have contemplated. Thus, where a foolish practical joker told the plaintiff that her husband had had both his legs smashed in a railway accident, and that she was to go to him at some distance immediately with appliances for bringing him home, he was held liable for the nervous shock and subsequent ill-health of the plaintiff (*p*).

(7) Where a gunmaker sold a gun to B., for the use of C., fraudulently representing it to be sound, and the gun burst while C. was using it, and he was thereby injured :— *Held*, that C. might maintain an action of fraud against the gun-maker, as the statement with regard to the soundness of the gun, though made to B., was intended to be acted upon, and was acted upon by C. (*q*).

Fraud of agent.

(8) A principal is generally liable for the fraud of his agent or servant acting within the scope of, and in the course of, his employment (*r*).

(*k*) *Edgington* v. *Fitzmaurice* (1885), 29 Ch. D. 485.
(*l*) *Macleay* v. *Tait*, [1906] A. C. 24.
(*m*) *Horsfall* v. *Thomas* (1862), 1 H. & C. 90.
(*n*) *Redgrave* v. *Hurd* (1881), 20 Ch. D. 1 ; *Wells* v. *Smith*, [1914] 3 K. B. 722.
(*o*) *Dobell* v. *Stevens*, 3 B. & C. 623.
(*p*) *Wilkinson* v. *Downton*, [1897] 2 Q. B. 57.
(*q*) *Langridge* v. *Levy*, *supra*.
(*r*) See Art. 27, *ante*.

Art. 74. Where, however, a principal intentionally keeps an agent ignorant of a fact, intending that he shall misrepresent it, and the agent does so, the principal is liable for fraud. His conduct in that case is as fraudulent as if he had himself made the misrepresentation with knowledge of its falsity (*t*).

ART. 75.—*Statements as to Credit.*

Where the fraudulent statement as distinguished from a negligent statement consists of a false representation as to the conduct, credit, ability or dealings of another, with intent to procure for him credit, money or goods, no action will lie unless the representation is in writing signed by the defendant (*u*), consequently an incorporated bank is not liable for a fraudulent misrepresentation made by a manager (*v*).

ART. 76.—*The Liability of Directors and Promoters of Companies.*

Directors and promoters of companies who are parties to the issuing of any prospectus inviting subscriptions to the shares, debentures or debenture stock of a company, are liable to persons who subscribe on the faith of such prospectus for untrue statements therein made **without reasonable ground** (*w*).

(*t*) *Ludgater* v. *Love*, 44 L. T. 694 [C. A.].

(*u*) 9 Geo. 4, c. 14, s. 6 (Statute of Frauds Amendment Act, 1828, known as Lord Tenterden's Act, explained in *Banbury* v. *Bank of Montreal*, [1918] A. C. 626). It will be observed that the signature must be that of the defendant himself, and not of an agent or partner (*Swift* v. *Jewsbury*, L. R. 9 Q. B. 301 [Ex. Ch.]; *Williams* v. *Mason*, 28 L. T. 232).

(*v*) *Bishop* v. *Balkis Consolidated Co.* (1890), 25 Q. B. D. 512; *Hirst* v. *West Riding Union Banking Co.*, [1901] 2 K. B. 560.

(*w*) Section 84 of the Companies (Consolidation) Act, 1908, being a re-enactment of the Directors' Liability Act, 1890.

Art. 76. — Comment.

The decision in *Derry* v. *Peek* (*x*), that if a person issuing a prospectus had an honest belief in its truth he could not be made liable in an action for deceit, however careless he may have been, and however slender the grounds of his belief, led to an amendment of the law by which Parliament created a statutory liability to pay compensation for untrue statements in prospectuses, **without proof of actual fraud,** unless the defendant has reasonable grounds for believing the statement to be true, or can establish one of the other defences allowed by the Act (*y*). It is now enacted that where a prospectus invites persons to subscribe for shares in, or debentures or debenture stock of, a company, every director and promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to persons who subscribe for any shares, debentures, or debenture stock, on the faith of such prospectus, for loss sustained by *any untrue statement* in the same, *unless it is proved either*—

(a) that the defendant had *reasonable ground to believe*, and did believe, that it was true ; or

(b) that the statement fairly represented some statement in the report of an expert (whom the defendant believed to be competent), or in a public or official document ; or

(c) that the prospectus was issued without the authority or consent of the defendant, and that he took the proper steps indicated in the Act to make this known (*y*).

It will be perceived that this statute creates a new statutory duty, the breach of which is a tort, but that it makes no alteration in the common-law action for deceit. In short, it makes directors and promoters liable for carelessness as well as for fraud (*z*). But the liability is none the less based in tort, and so the right dies with the party injured and with the tort-feasor (*a*).

(*x*) 14 App. Cas. 337.

(*y*) Section 84 of the Companies (Consolidation) Act, 1908, being a re-enactment of the Directors' Liability Act, 1890.

(*z*) See *Dovey* v. *Cory*, [1901] A. C. 477 ; *Prefontaine* v. *Grenier*, [1907] A. C. 101 [P. C.].

(*a*) *Geipel* v. *Peach*, [1917] 2 Ch. 108.

CHAPTER VII.

OF NEGLIGENCE.

ART. 77.—*Definition.*

NEGLIGENCE consists in the omission to do something which a prudent and reasonable man would do, or the doing something which a prudent and reasonable man would not do, and is actionable whenever, *as between the plaintiff and the defendant*, there is a duty cast upon the latter not to be negligent, and a breach of this duty which causes damage to the plaintiff (*a*).

It will be seen that there are three points to be established to found an action for negligence :

(i) A duty to take care, owed by the defendant to the plaintiff. Duty to take care.

(ii) A breach of that duty—negligence.

(iii) Damage as the natural and probable consequence.

The duty to take care arises out of many relations equally impossible of strict definition or of enumeration in a short compass, among others in performing duties gratuitously.

Some of the typical cases are dealt with in the following articles, but the list is not exhaustive. It must not be forgotten, however, that though there is a vast variety of circumstances in which there is a duty to take care, yet *where there is no duty there can be no action for negligence*, "and a man is entitled to be as negligent as he pleases towards the whole world if he owes no duty to them" (*b*).

(*a*) *Blyth* v. *Birmingham Waterworks Co.*, 11 Ex. 781, 784 ; *Smith* v. *L. & S. W. Rail. Co.* (1870), L. R. 5 C. P., at p. 102 ; see *per* Lord HERSCHELL, *Caledonian Rail. Co.* v. *Mulholland*, [1898] A. C. 216, at p. 225.

(*b*) *Le Lievre* v. *Gould*, [1893] 1 Q. B., at p. 497 [C. A.].

Art. 77. The student should refer back to Part I., Chapter III., where some of the cases in which it has been held that there is no duty to take care are considered (*c*). Other cases will be found in the following Articles.

What is negligence.

It will be observed that negligence may consist in either misfeasance, *i.e.*, doing that which a prudent and reasonable man would not do; or in nonfeasance, *i.e.*, omitting to do something which a prudent and reasonable man would do. Negligence is judged by the standard of prudence of an ordinary reasonable man, and if a person omits some precaution which a person of ordinary intelligence and prudence would take, he is negligent, although he may himself honestly think it unnecessary to take such a precaution. So a person may be negligent in taking care of another's money entrusted to him for that purpose—though he takes as much care of it as he takes of his own (*d*).

Degree of care required depends on circumstances.

It must be remembered that the degree of care which a person is bound to use in regard to others is relative, and that in deciding whether a given act is, or is not, negligent, the circumstances attending each particular case must be fully considered. "A man," it has been said, "who traverses a crowded thoroughfare with edged tools, or bars of iron, must take especial care that he does not cut or bruise others with the things he carries. Such person would be bound to keep a better look out than the man who merely carried an umbrella; and the person who carried an umbrella would be bound to take more care in walking with it than a person who had nothing at all in his hands."

Want of skill.

A person who undertakes something requiring special knowledge or skill is negligent if by reason of his not possessing that knowledge or skill he bungles, although he does his best (*e*).

Examples.

So a person who drives a horse or a motor car is negligent if he does something which a prudent person having

(*c*) See especially *Winterbottom* v. *Wright*, 10 M. & W. 109; *Gladwell* v. *Steggall*, 5 Bing. N. C. 733; and *Le Lievre* v. *Gould*, [1893] 1 Q. B. 491 [C. A.], *ante*, Art. 17; and *Caledonian Rail. Co.* v. *Mulholland*, [1898] A. C. 216; *Butler* v. *Fife Coal Co.*, [1912] A. C. 159.

(*d*) *Doorman* v. *Jenkins*, 2 A. & E. 256; *Meux* v. *Great Eastern Rail. Co.*, [1895] 2 Q. B. 387 [C. A.].

(*e*) *Heaven* v. *Pender* (1883), 11 Q. B. D. 507.

reasonable skill as a driver would not do ; the bolting of a horse which has been left *unattended* in a public street is *primâ facie* evidence of negligence (*ee*) ; and a person practising surgery without the ordinary skill and knowledge of a surgeon, is negligent if he blunders by reason of his want of knowledge and skill (*f*). Art. 77.

The owner of a motor car is entitled when about his business to leave his car unattended ; such an act could not be negligent *per se* (*ff*).

But no person is required to have extraordinary foresight, prudence or skill, and so long as one uses ordinary skill and acts with reasonable prudence, he cannot be said to be negligent (*g*).

So in the case of a solicitor, erroneous judgment upon a new point of law or upon a difficult question of construction is not negligence, but ignorance of practice and mismanagement of the preparation of a case for trial is, for these are matters in which a solicitor of ordinary intelligence, and having that knowledge of his professional duties which all solicitors should have, ought not to make a mistake (*h*). Solicitors.

ART. 78.—*Duty of Persons using Highway to take Care.*

Every person using a highway or other place frequented by the public owes a duty to take care as regards the persons and property of others. So if a person driving or riding on a highway *by his negligence* runs over, or otherwise damages, another person on the highway an action will lie for the damage suffered. So, also, persons in charge of ships at sea or on

(*ee*) *Gayler & Pope, Ltd.* v. *B. Davies & Son, Ltd.*, [1924] 2 K. B. 75.

(*f*) *Gladwell* v. *Steggall*, 5 Bing. N. C. 733.

(*ff*) *Martin* v. *Stanborough* (1924), 40 T. L. R. 557 [C. A.].

(*g*) *Hammack* v. *White* (1862), 11 C. B. [N.S.] 588 ; *Manzoni* v. *Douglas* (1880), 6 Q. B. D., LINDLEY, J., at p. 153.

(*h*) *Purves* v. *Landell* (1845), 12 Cl. & F. 91 ; *Fletcher* v. *Jubb, etc.*, [1920] 1 K. B. 275 [C. A.].

Art. 78. rivers are bound to use care not to do damage to the persons or property of others (*i*).

NOTE.—This rule does not depend on the special nature of highways. It applies generally to all places where persons are likely to meet others. As Lord BLACKBURN says: "Those who go personally or bring property where they know that they or it may come in collision with the persons or property of others, have by law a duty cast upon them to use reasonable care and skill to avoid such a collision" (*j*). So the rule applies equally to persons on railway stations, in shops, or any other places where people congregate.

ART. 79.—*Duty of Carriers of Passengers.*

Carriers of passengers by any sort of carriage or conveyance owe to passengers a duty to take reasonable care to carry them safely. This duty arises not from contract but from the fact that the passenger is being carried with the knowledge and consent of the carrier; and it applies whether the carriage is gratuitous or for reward (*k*), but not if the passenger is a mere trespasser (*l*).

NOTE.—This rule is the foundation of the liability of railway companies to their passengers. That the duty is one arising quite **independently of any contract** between the carrier and the passenger is laid down in *Kelly* v. *Metropolitan Rail. Co.* (*m*), and is well shown by the following illustrations. It must be noted that a carrier of passengers (unlike a common carrier of goods) does **not warrant** the safety of the passenger. He is only liable for negligence,

(*i*) See the rule stated more broadly by Lord BLACKBURN in *Dublin, Wicklow and Wexford Rail. Co.* v. *Slattery*, 3 App. Cas. 1155, at p. 1206; and by Lord ESHER more broadly still in *Heaven* v. *Pender*, 11 Q. B. D. 503 [C. A.]. In the latter case COTTON and BOWEN, L.JJ., dissented from Lord ESHER's proposition, and Lord ESHER himself explained it in *Le Lievre* v. *Gould*, [1893] 1 Q. B. 491, 497 [C. A.].

(*j*) *Dublin, Wicklow and Wexford Rail. Co.* v. *Slattery*, 3 App. Cas. 1155, at p. 1206.

(*k*) *Harris* v. *Perry & Co.*, [1903] 2 K. B. 219.

(*l*) *Grand Trunk Rail. Co.* v. *Barnett*, [1911] A. C. 361 [P. C.]; *Lygo* v. *Newbold*, 9 Ex. 302.

(*m*) [1895] 1 Q. B. 944 [C. A.], explaining *Taylor* v. *Manchester Sheffield and Lincolnshire Rail. Co.*, [1895] 1 Q. B. 134 [C. A.].

and if an injury happens to the passenger **without negligence there is no liability** (*n*). **Art. 79.**

Illustrations.

(1) An infant over three years of age whilst travelling by railway with its mother (with the knowledge and implied consent of the company's servants, but without a ticket) was injured by the negligence of the railway company. The company were held liable though there was no contract to carry the infant (*o*).

(2) But where a person was injured whilst travelling on the footboard of a train in defiance of a byelaw and without the permission of the company, so that he was a mere trespasser, it was held that the company owed him no duty and he had no cause of action (*p*). But distinguish this from the position of a licensee for whose safety failure to take reasonable care will entail liability for negligence (*q*).

(3) A passenger in a railway train was injured in an accident caused by the breaking of the tyre of a wheel of the carriage in which he rode. The defendants had used all diligence in providing a safe carriage and examining it before starting and in the course of the journey. There being no negligence the company were not liable (*r*).

(4) Where works were being executed over a railway line by an independent authority, causing injury, there was no duty on the railway company to take precautions against negligence, and the company were held not liable (*rr*).

See also *Harris* v. *Perry & Co.* (*s*), and cases cited *ante*, Art. 18.

ART. 80.—*Duty of Occupiers of Land and Houses to Persons coming by Invitation, etc.*

(1) An **occupier** of land, buildings or structures owes to persons resorting thereto in the course of business upon his invitation, express

(*n*) *Readhead* v. *Midland Rail. Co.*, L. R. 4 Q. B. 379 [Ex. Ch.]; *Newberry* v. *Bristol Tramways Co.* (1912), 107 L. T. 801.

(*o*) *Austin* v. *Great Western Rail. Co.*, L. R. 2 Q. B. 442.

(*p*) *Grand Trunk Rail. Co.* v. *Barnett*, [1911] A. C. 361 [P. C.].

(*q*) *Tough* v. *North British Rail. Co.*, [1914] S. C. 291.

(*r*) *Readhead* v. *Midland Rail. Co.*, L. R. 4 Q. B. 379.

(*rr*) *Daniel* v. *Metropolitan Ry.* (1871), 5 H. L. 45.

(*s*) [1903] 2 K. B. 219 [C. A.].

Art. 80.

or implied, a duty to use reasonable care to prevent damage from unusual danger of which he knows or ought to know (*t*).

(2) An occupier of land or buildings owes to bare licensees and guests a duty not to set a trap, *i.e.*, not to put there any unexpected danger of which he actually knows without warning the licensee or guest (*u*).

Persons coming by invitation.

The duty owed to persons coming in the course of business by invitation applies to all persons who go on business which concerns the occupier, or in which he is even indirectly interested. There need not be an express invitation. An invitation is implied when the persons come in the ordinary course of business. It will be noticed that the rule of liability does not throw on the occupier an absolute duty to insure the safety of the premises. So he is not liable for some latent defect in a structure which he did not know of and could not have provided against by taking reasonable care. It is only a duty to **use reasonable care to prevent damage from unusual danger,** *i.e.*, from dangers which would not usually be found on premises of the kind. Persons cannot complain of dangers which they would expect to find on premises of the kind.

Duty as between landlord and tenant.

As between landlord and tenant the duty to repair the demised premises depends entirely on the contract between the parties, and apart from contract the landlord owes the tenant no duty to repair or not to let the premises in a dangerous condition. Hence, if a landlord lets a house in a dangerous condition, he is not liable to the tenant or to a person using the premises by invitation of the tenant for any injuries happening during the term owing to the defective state of the house (*v*).

(*t*) *Indermaur* v. *Dames*, L. R. 1 C. P. 274; affirmed L. R. 2 C. P. 311 [Ex. Ch.], followed in *Mercer* v. *S. E. & C. Ry.*, [1922] 2 K. B. 549; *Elliott* v. *Roberts, Limited*, [1916] 2 K. B. 518 [C. A.]; *Sutcliffe* v. *Clients Investments Co.* (1924), 40 T. L. R. 765 [C. A.].

(*u*) See *Indermaur* v. *Dames*, *supra*, and *Gautret* v. *Egerton*, L. R. 2 C. P. 371; *Kimber* v. *Gas Light & Coke Co.*, [1918] 1 K. B. 439 [C. A.].

(*v*) *Lane* v. *Cox*, [1897] 1 Q. B. 415 [C. A.]. As to the implied warranty in the case of a letting of a *furnished* house, see *Smith* v.

Art. 80.

Accordingly when a landlord contracted with his tenant to repair a defective house, but failed to do so, and the wife of the tenant was injured by reason of the defective state of the house, it was held that she had no cause of action, as she was a stranger to the contract (*x*), and the defect being obvious there was no trap for which the landlord could be made liable in tort (*y*).

So, too, when an owner of a building let out in flats or separate tenements keeps possession of the common staircase, he owes to his tenants (apart from contract) with regard to lighting and repairing the staircase, and the guests of his tenants or persons coming on business with them, no duty other than that owed to bare licensees, *i.e.*, to warn of any unusual or concealed danger of which the owner is aware. Accordingly, if such a person is injured in consequence of the dangerous condition of the staircase he has no cause of action against the landlord (*z*) unless (1) the landlord has taken upon himself, by contract with the tenant, the obligation of repairing, in which event, as he must contemplate that the staircase will be used by persons having business with the tenants, he owes them a duty to keep the premises free from non-apparent defects, amounting to a trap (*a*).

Bare licensees, *i.e.*, persons who come not for any business in which the occupier is interested, but merely by permission

Marrable, 11 M. & W. 5; and *Wilson* v. *Finch Hatton*, 2 Ex. D. 336; and see *Sarson* v. *Roberts*, [1895] 2 Q. B. 395 [C. A.].

And as to the statutory obligation to repair in the case of small houses within the Housing, Town Planning, etc., Act, 1909 (9 Edw. 7, c. 44), ss. 14, 15, it has been decided that this obligation is in favour of the tenant only, and not available to give a right of action to his wife (*Middleton* v. *Hall* (1913), 108 L. T. 804) or his daughter (*Ryall* v. *Kidwell & Son*, [1914] 3 K. B. 135) to recover for damage due to non-fulfilment of the obligation. But as to the tenant himself it is no answer that the danger was obvious (*Dunster* v. *Hollis*, [1918] 2 K. B. 795).

(*x*) *Cavalier* v. *Pope*, [1906] A. C. 428.

(*y*) *Lucy* v. *Bawden*, [1914] 2 K. B. 318; *Norman* v. *Great Western Rail. Co.*, [1915] 1 K. B. 584 [C. A.]; *Dobson* v. *Horsley*, [1915] 1 K. B. 634 [C. A.].

(*z*) *Huggett* v. *Miers*, [1908] 2 K. B. 278 [C. A.]; and compare *Ivay* v. *Hedges*, 9 Q. B. D. 80. It is difficult to reconcile *Hargroves, Aronson & Co.* v. *Hartopp*, [1905] 1 K. B. 472, with these cases.

(*a*) *Fairman* v. *Perpetual Investment Building Society*, [1923] A. C. 74, overruling *Miller* v. *Hancock*, [1893] 2 Q. B. 177.

Art. 80.

Licensees and guests.

for their own purposes, and guests, are in a somewhat different position. Their position is analogous to that of a person who receives a gift. He is only entitled to use the place as he finds it, and cannot complain, unless there is some design to injure him, or the occupier has done some wrongful act, such as digging a trench on the land or misrepresenting its condition, or anything equivalent to laying a trap for the unwary. A giver of a gift is not responsible for the insecurity of the gift unless he knows its evil character at the time and omits to caution the donee. So, too, in the case of a person to whom permission to go on land is given, he cannot complain unless there is something like fraud in the gift (*b*). But where the licence is limited in area the licensor is under no liability to warn a licensee who trespasses on to other ground (*c*).

Trespassers.

Trespassers are in a worse position than bare licensees, for, as no permission is given, there can be no duty to give warning of danger. And he cannot maintain an action where his unlawful act or conduct is connected with the harm he suffers as part of the same transaction, *e.g.*, falling into a hole in the land trespassed on. But even a trespasser has a right of action if he is injured, whilst trespassing, by some wrongful act of the occupier, as, for instance, if he is assaulted, or is injured by something which the occupier of the land has put there for the purpose of injuring him (*d*), *e.g.*, spring guns, and other infractions of statutes as to fencing, barbed wire, and highways, or with a knowledge he is there (*e*).

The judgment of WILLES, J., in the two leading cases of *Indermaur* v. *Dames* and *Gautret* v. *Egerton*, should be carefully studied.

Illustrations.

(1) Upon the defendant's premises was a trap-door on the level of the floor used for raising and lowering bags of sugar from one floor to another. It was not necessary that

(*b*) See the judgment of WILLES, J., in *Gautret* v. *Egerton*, L. R. 2 C. P. 371.

(*c*) *Jenkins* v. *Great Western Rail. Co.*, [1912] 1 K. B. 525.

(*d*) *Bird* v. *Holbrook*, 4 Bing. 628.

(*e*) *Petrie* v. *Rostrevor Owners*, [1898] 2 Ir. R. 556.

Art. 80.

Persons coming by invitation.

it should be unfenced when not in use. The plaintiff, a journeyman gasfitter employed by persons who had fixed a gas regulator upon the defendant's premises, came to test the apparatus. Whilst so engaged he fell through the trap-door and was injured. The trap-door at the time was not in use and was not fenced. There was no negligence on his part:—*Held*, that he was on the premises on business in which the defendant was interested, and that the defendant was liable as the danger was an unusual danger, and the defendant had neglected his duty to take reasonable care by fencing it or warning the plaintiff (*f*).

(2) The plaintiff, a licensed waterman, having complained to the person in charge that a barge of the defendants was being navigated unlawfully, was referred to the defendants' foreman. While seeking the foreman, he was injured by the falling of a bale of goods so placed as to be dangerous, and yet to give no warning of danger:—*Held*, that the defendants were liable (*g*).

(3) The defendant engaged a contractor to erect a grand stand for viewing races. The plaintiff paid for a seat on the grand stand. Owing to the negligence of the contractor the stand was defective, and it fell and the plaintiff was injured. The defendant was liable, although neither he nor his servants were personally negligent. It was their duty to see that the stand was reasonably safe (*h*).

(4) The lessee and manager of a theatre arranged with M. that M. should bring a theatrical company and present a drama in his theatre. The manager provided the theatre and paid for lighting and playbills, and was to receive 60 per cent. of the gross takings. M. was to provide and pay the company, furnish the scenery and appliances of the play, and take 40 per cent. of the gross takings. The plaintiff, a member of the audience, was injured by a loose cartridge from a pistol discharged by an actor as an incident of the performance:—*Held*, that the duty of the manager to the members of the audience is to use reasonable care

(*f*) *Indermaur* v. *Dames*, L. R. 1 C. P. 274; affirmed L. R. 2 C. P. 311 [Ex. Ch.].

(*g*) *White* v. *France*, 2 C. P. D. 308.

(*h*) *Francis* v. *Cockrell*, L. R. 5 Q. B. 184.

Art. 80.

to prevent damage from dangers of which he knows or ought to have known. Beyond this his liability does not extend. He is not an insurer of the safety of his audience, and is not liable for acts of negligence in the performing company, who are not his servants, unless by the exercise of reasonable care he could have prevented such negligence occurring (*hh*).

(5) Workmen were allowed to cross a piece of vacant land to get to some docks. On this land were canals and bridges. One of the bridges was out of repair, and a workman when crossing by it fell into a canal and was drowned. In an action brought by his widow it was held that as the workman was a bare licensee he must take the place as he found it, and as there was no trap the defendant was not liable (*i*).

Children.

But where children were bare licensees and in playing on defendant's land one was injured by one of a heap of stones there falling on her hand, it was held that there being no concealed danger there was no duty to warn and consequently no liability (*k*). And where children were repeatedly warned and sent away by the servants of a railway company to prevent them coming on the company's premises and playing with a moving staircase, it was held that their return after such warnings constituted them trespassers with no right of action for resultant injury (*l*).

(6) In *Lowery* v. *Walker* (*m*) the defendant was a farmer who put in a field a horse which he knew to be savage. The plaintiff had tacit permission to cross the field, and whilst doing so was bitten by the horse, and as no warning was given of the concealed danger to the tacit licensee the defendant was held liable.

Trespassers.

(7) If a person sets a spring gun on his land with the intention that it shall go off and cause injury to tres-

(*hh*) *Cox* v. *Coulson*, [1916] 2 K. B. 177 [C. A.], followed in *Sheehan* v. *Dreamland Margate, Ltd.* (1923), 40 T. L. R. 155 [C. A.].

(*i*) *Gautret* v. *Egerton*, L. R. 2 C. P. 371.

(*k*) *Latham* v. *Johnson & Nephew, Limited*, [1913] 1 K. B. 398.

(*l*) *Hardy* v. *Central London Rail. Co.* (1920), 36 T. L. R. 843.

(*m*) [1911] A. C. 10.

passers, he is liable for the intentional wrong so done. What he does really amounts to an assault (*n*). If he leaves dangerous things like guns about he must take proper precautions to prevent their doing damage (*o*), and *a fortiori* he is liable if he contrives that they shall do damage. Art. 80.

ART. 81.—*Duty of Bailees of Goods.*

Bailees of all kinds, including carriers, owe to their bailors a duty to take care of the goods and chattels bailed. The degree of care required varies with the nature of the bailment (*p*).

NOTE.—All kinds of bailees of goods and chattels are bound at least to take reasonable care of the goods bailed to them, though, generally speaking, greater care is expected of one who derives benefit from the bailment, such as a borrower of goods, or a pawnbroker or hirer, or a warehouseman who is paid for keeping them, than from one who has the custody of goods for the benefit of the bailor only, such as one who gratuitously undertakes their custody for the convenience of the owner (*q*).

The topic of the liability of carriers and other bailees for the safety of goods entrusted to them is too large to be dealt with fully in this work, and it is only necessary here to refer the student to the cases cited in a previous Article, which show that the liability is one in tort, arising by reason of the bailment and quite apart from contract (*r*). It must be remembered, however, that the liability of a bailee may be modified by contract between the parties, and where goods are carried under an express contract the common-law liability of the bailee may be thereby much enlarged or curtailed.

Common carriers.

At common law a common carrier, that is, a person who holds himself out as carrying on the business of carrying the goods of all and sundry from place to place, is liable

(*n*) *Bird* v. *Holbrook*, 4 Bing. 628.

(*o*) See *Dixon* v. *Bell*, 5 M. & S. 198.

(*p*) See *Coggs* v. *Bernard*, 1 Sm. L. C. 173.

(*q*) See *ante*, Art. 18.

(*r*) See *Turner* v. *Stallibrass*, [1898] 1 Q. B. 56 [C. A.]; and *Meux* v. *Great Eastern Rail. Co.*, [1895] 2 Q. B. 387.

Art. 81. for any loss of, or injury to, the goods unless he can show that the loss was due to the act of God or the King's enemies, or to some inherent vice or unfitness to be carried of the goods themselves. A carrier of goods by sea is under the same liability, as also is an innkeeper. The common-law liability in all these cases has to some extent been modified by statute (*s*), and may always in any particular case be modified by agreement between the parties. Bailees who are under this special liability are sometimes (though not quite accurately) spoken of as "insurers."

ART. 82.—*Duty to take Precautions with regard to things Dangerous in themselves.*

(1) In the case of articles dangerous in themselves, such as loaded firearms, poisons, explosives and other things *ejusdem generis*, there is a peculiar duty imposed on those who send forth, make or leave about such articles to take precautions that they shall not do damage to persons who may come in contact with them (*t*).

(2) A person who without due warning supplies to others for use an instrument or thing which *to his knowledge*, from its construction or otherwise, is in such a condition as to cause danger not necessarily incident to the use of such instrument or thing is liable if damage is caused thereby (*u*).

(3) If damage is done by reason of the neglect of such precautions or warning, it is no excuse that the damage would not have happened but

(*s*) See notes to *Coggs* v. *Bernard* in 1 Sm. L. C. 173. As to innkeepers, see *Calye's Case* and notes in 1 Sm. L. C. 119.

(*t*) *Thomas* v. *Winchester*, 6 New York 397; *Dominion Natural Gas Co.* v. *Collins and Perkins*, [1909] A. C. 640, 646 [P. C.]; *Blacker* v. *Lake & Elliot, Limited* (1912), 106 L. T. 533.

(*u*) *Per* COTTON and BOWEN, L.JJ., in *Heaven* v. *Pender*, 11 Q. B. D. 503, 517 [C. A.]; *Bates* v. *Batey & Co., Limited*, [1913] 3 K. B. 351.

for the intermeddling of some third person, if such intermeddling is such as might naturally occur (*v*). Art. 82.

(4) But if the immediate cause of the damage is the conscious act of volition of some third person that is a defence, for no precaution can avail against such conscious act of volition (*v*).

Comment. The first rule is applicable to all things dangerous in themselves, such as those above described. The nature of the precautions to be taken must necessarily depend on the circumstances. In some cases it would be proper and sufficient to give warning of the danger so as to put persons on their guard against dangers which are not apparent from the nature of the thing. The following illustrations will show the nature of the precautions which the courts have held requisite in different circumstances (see also the closely allied rules stated in Arts. 88-90). In most of these cases the immediate cause of the damage has been the intermeddling of a third person. This is no defence if such intermeddling is what would be naturally expected of a person who was unconscious of the danger or of the proper way to avoid it. "A loaded gun will not go off unless someone pulls the trigger, a poison is innocuous unless someone takes it, gas will not explode unless it is mixed with air and then a light is set to it"; yet in each of these circumstances the liability has been enforced. It is, however, another matter if a third person finding a loaded gun consciously fires it off at someone, or if a person who has bought poison consciously takes it himself or administers it to someone else. In such cases the damage is not caused by the absence of precautions, but by the wrongful act of the person who fires the gun or administers the poison.

Illustrations. (1) Where the defendant entrusted a loaded gun to an inexperienced servant girl, and she pointed and fired it at the plaintiff's son, wounding and injuring him, it was held that the defendant was liable. He had given directions that the priming should be removed so as to make the

(*v*) See (*t*), *supra*.

Art. 82.

gun safe, but this was not done properly and the gun was left in a dangerous state; so the defendant was responsible (*w*).

(2) Where the defendant negligently compounded a hair wash of dangerous chemical ingredients, and a person using it, and for whose benefit it was bought, suffered injury, the defendant was held liable (*x*). But this decision has not been followed in two recent cases where the manufacturers of articles which have caused damage to purchasers by virtue of defective manufacture have not been held liable for such damage, on the ground that as there was no contract between the parties no duty was owed by the makers to the injured purchasers (*y*).

(3) Quite apart from any warranty or the terms of the contract of sale, the vendor of goods which have some dangerous quality of which he knows, but of which the purchaser cannot be expected to be aware, owes a duty to the purchaser to take reasonable precautions by warning him that special care will be requisite, and for damages resulting from breach of that duty an action lies (*z*). Thus, where the defendants sold a tin of chlorinated lime, **knowing that it was likely to cause danger** to a person opening it unless special care was taken, and the danger was not such as would be known by the purchaser, the defendants were held liable for damage caused to the plaintiff by opening the tin without taking proper precautions, in consequence of which there was an explosion and her eyes were injured (*a*). And there is a similar duty on the part of one gratuitously lending goods to another, for breach of which, followed by damages, an action will lie. Note that in these cases it is essential to show knowledge of the defect on the part of

(*w*) *Dixon* v. *Bell*, 5 M. & S. 198.

(*x*) *George* v. *Skivington*, L. R. 5 Ex. 1.

(*y*) *Blacker* v. *Lake & Elliot* (1912), 106 L. T. 533; *Bates* v. *Batey & Co., Limited*, [1913] 3 K. B. 351; *per contra White* v. *Steadman*, [1913] 3 K. B. 340; but here LUSH, J., appears to draw a distinction between things inherently dangerous and those which are dangerous by defective manufacture only.

(*z*) *Heaven* v. *Pender* (1883), 11 Q. B. D. 517.

(*a*) *Clarke* v. *Army and Navy Co-operative Society*, [1903] 1 K. B. 155 [C. A.].

Art. 82.

the seller or lender (*b*). A person who does not make but merely sells a thing he does not know to be dangerous may be liable for breach of warranty to the buyer, but is not liable in tort to the buyer or to users of the thing (*c*).

(4) A railway company kept a turntable unlocked (and therefore dangerous to children) on their land close to a public road. The railway servants knew that children were in the habit of trespassing and playing with the turntable, and took no steps to prevent them from so doing or to lock the machine so as to prevent it being dangerous. A child between four and five years of age, playing with other children on the turntable, was seriously injured. The company were held liable as they should have taken precautions to prevent such an accident as was likely to happen, and did happen, to the child (*d*), because the presence of the dangerous unlocked turntable constituted an allurement which made the children invitees. In a later case (*e*), on analogous facts, where the injury to a child arose from playing with a heap of stones on defendants' ground, the heap of stones was held not to be an allurement nor to be a dangerous thing laying upon the defendants any other duties than those owed to mere licensees. In a more recent case warnings given repeatedly to children to go away from a company's premises to prevent them being injured by playing about a working staircase was held to constitute them trespassers and so without remedy for injuries resultant in disobedience to the warnings (*f*). So if a person leaves a cart unattended in the street and boys play with it, as is their nature, and one is injured, he may have a cause of action against the owner of the cart, although the action would not have happened but for the intermeddling of himself and his companions (*g*). But it is now clear that the owner of a vehicle left on the highway

(*b*) *Bates* v. *Batey & Co., Limited*, [1913] 3 K. B. 351.

(*c*) *Longmeid* v. *Holliday*, 6 Ex. 761; *Coughlin* v. *Gillison*, [1899] 1 Q. B. 145 [C. A.].

(*d*) *Cooke* v. *Midland Great Western Rail. Co. of Ireland*, [1909] A. C. 229, discussed and explained in *Glasgow Corporation* v. *Taylor*, [1922] 1 A. C. 44.

(*e*) *Latham* v. *Johnson & Nephew, Limited*, [1913] 1 K. B. 398.

(*f*) *Hardy* v. *Central London Rail. Co.* (1920), 36 T. L. R. 843.

(*g*) *Lynch* v. *Nurdin*, 1 Q. B. 29.

Art. 82. will not be liable for damage done by its being set in motion by third parties unless it was reasonable that he should have anticipated the effective interference which caused the damage (*h*).

(5) A person who consigns to a common carrier is under an *absolute* duty not to consign to him for carriage goods which are dangerous to carry, without warning the carrier of their dangerous character, unless the carrier knows, or ought to know, the dangerous character of the goods ; and if by reason of their dangerous character the carrier or his servants are injured the consignor is liable, although he does not himself know of the dangerous character of the goods (*i*).

ART. 83.—*Contributory Negligence.*

"In all cases of damage by collision on land or sea there are three ways in which the question of contributory negligence may arise.

(1) "A. is suing for damage received by the collision. He was negligent, but his negligence had brought about a state of things in which there would have been no damage if B. had not been *subsequently* and severally negligent. A. recovers in full.

(2) "At the other end of the chain A.'s negligence makes collision so threatening that although by the appropriate measure B. could avoid it, B. has not really time to think, and by mistake takes the wrong measure. B. is not held to be guilty of any negligence, and A. wholly fails.

(3) "In between these two termini come the

(*h*) *Ruoff* v. *Long & Co.*, [1916] 1 K. B. 148. Cf. with *Turner* v. *Coates* (1916), 33 T. L. R. 79.

(*i*) *Bamfield* v. *Goole and Sheffield Transport Co.*, [1910] 2 K. B. 94 [C. A.], followed in *G. N. Ry.* v. *L. E. P. Transport and Depository*, [1922] 2 K. B. 742.

cases where the negligence is deemed contributory, and the plaintiff at common law recovers nothing, while in Admiralty damages are divided in some proportion or other" (*ii*). Art. 83.

While no doubt where a clear line can be drawn, the subsequent negligence is the only one to look to, there *are* cases in which the two acts come so closely together and the second act of negligence is so much mixed up with the state of things brought about by the first act that the party secondly negligent, while not held free from blame, might on the other hand invoke the prior negligence as being part of the cause of the collision, so as to make it a case of contributory negligence. Explanation.

The defendants were in the habit of taking full trucks from the siding of a colliery company and returning empty ones. Over this siding was a bridge belonging to the colliery company. One Saturday afternoon the company ran some trucks on the siding. One was loaded so high that it would not pass under the bridge. On the Sunday evening the company brought some more trucks and pushed forward those already on the siding. Finding something was holding the trucks, the engine-driver put on more power and pushed till he got them on. It was the bridge which held the loaded truck, and the result was that the bridge was knocked down. Now, assuming that the colliery company were negligent in loading the truck so that it would not pass under the bridge, it does not follow that their negligence was an effective cause of the accident. It may be that if the engine-driver had been prudent and reasonable he should have got out to see what was wrong, and so would have avoided the consequences of the colliery company's negligence. In this view of the facts it was held that the judge who tried the case was wrong in telling the jury that the plaintiffs (the colliery owners) must satisfy them that the accident happened *solely* through the negligence of the defendants' servants, and that if both sides were negligent so as to contribute to the Illustration.

(*ii*) *Per* Lord BIRKENHEAD, L.C., in *The Volute*, [1922] 1 A. C., at p. 136.

Art. 83.

accident, the plaintiffs could not recover. He ought to have told them that if they thought **the engine-driver might by ordinary care have avoided all accident,** any previous negligence of the defendants would not preclude them from recovering (*k*).

Statement of the rule by WILLES, J.

The law on this point was thus summarised by WILLES, J.: "If both parties were equally to blame, and the accident *the result* of their joint negligence, the plaintiff could not be entitled to recover. If the negligence and default of the plaintiff was in any degree the *proximate cause* of the damage, he could not recover, however great may have been the negligence of the defendant. But that if the negligence of the plaintiff was only remotely connected with the accident, then the question was, whether the defendant might not, by the exercise of ordinary care, have avoided it" (*l*). The doctrine of *Tuff* v. *Warman* has received a refinement of application in a recent case (*m*) where, despite the negligence of the plaintiff in crossing a level crossing when a train was approaching, and that the last opportunity to avoid the accident lay with the plaintiff, yet as the inability of the train driver to pull up in the space left was due to the faulty condition of his brake, it was held the company could not set up the contributory negligence of the plaintiff, as the last opportunity of avoiding the accident would have lain with their driver if his brake had been in good order, and so it was held to have lain constructively with them.

Illustrations.

Davies v. *Mann.*

(1) Therefore, where the plaintiff left his ass with its legs tied in a public road, and the defendant drove over it and killed it, he was held to be liable; for he was bound to drive carefully and circumspectly, and **had he done so he might readily have avoided driving over the ass** (*n*).

Butterfield v. *Forrester.*

(2) But where the defendant negligently and wrongfully left a pole across a highway, and the plaintiff, by riding negligently, ran against it and was hurt, it was held that as,

(*k*) *Radley* v. *L. & N. W. Ry. Co.* (1876), 1 App. Cas. 754.

(*l*) *Tuff* v. *Warman*, 2 C. B. (N.S.) 740, 743; affirmed in Ex. Ch., 5 C. B. (N.S.) 573.

(*m*) *British Columbia Electric Rail. Co.* v. *Loach*, [1916] A. C. 719.

(*n*) *Davies* v. *Mann*, 10 M. & W. 546.

if he had used ordinary care, he might have seen the pole and avoided it, the accident was entirely due to his own negligence, and the defendant was not liable (*o*).

Joint negligence of plaintiff and defendant.

(3) But in all cases where two persons are negligent and the accident is the result of their joint negligence, neither can recover against the other. And so, in cases of collision between carriages, the question is, whether the sole effective cause of the disaster was the negligence of the defendant, or whether the plaintiff himself so far contributed to the disaster, by his own negligence, or want of common and ordinary care, that, but for his default in this respect, the disaster would not have happened. In the former case he recovers, in the latter not. But where damage results from doing an act which is reasonable in circumstances caused by the negligence of the defendant, the fact that the damage arises solely through the doing of that reasonable act will not prevent the plaintiff recovering (*p*).

Doctrine of identification.

(4) There is no longer any rule of law that the driver of an omnibus, or coach, or cab, or the engineer of a train, or the master of a vessel, and their respective passengers, are so far identified as to affect the *latter* with any liability for the former's contributory negligence (*r*).

Contributory negligence in infants.

(5) Where the plaintiff is a child of tender years, it is not necessarily a good defence to an action of negligence to prove that he himself contributed to his injury. In that case the defendant left a cart unattended in the street. The plaintiff, a boy of seven, climbed into the cart to play, another boy led on the horse, and the plaintiff fell and was hurt. If he had been a grown man it would have been a good defence that the proximate cause of the accident was his own wrongdoing—but the court held that as much care cannot be expected of a boy as of a grown person—and the act of the plaintiff, considering his age, was not such as to disentitle him from recovering (*s*). This case and the later authorities show that what would amount to contributory

(*o*) *Butterfield* v. *Forrester*, 11 East, 60.
(*p*) *Brandon* v. *Osborne Garrett & Co.*, [1924] 1 K. B. 548.
(*r*) *The Bernina* (1888), 13 App. Cas. 1.
(*s*) *Lynch* v. *Nurdin*, 1 Q. B. 29.

Art. 83. negligence in a grown-up person, may not be so in a child of tender years (*t*).

Persons in charge of infants.

(6) It has been held that where an infant is incapable of taking care of himself, he cannot recover if the person in whose charge he was, was guilty of contributory negligence (*u*). But whether this is consistent with principle seems questionable. For the person in charge is not the agent of the child, but of its parent or guardian; and in other respects the case of *The Bernina* (*x*) would seem to apply.

ART. 84.—*Effective Cause.*

The negligence of the defendant must be an effective cause of the damage.

General principle.

It appears from the decision in *Re Polemis and Furness, Withy & Co.* (see Arts. 5 and 37) that, provided the negligent act of the defendant is established, he is liable for all consequences which flow directly from that act, whether they ought to have been contemplated or not. As to what does flow directly from the negligent act, all damage consequent upon that act seems to be included unless such damage is attributable to a separate cause.

Combined negligence of defendant and third party.

It sometimes happens that though the defendant was negligent, the real effective cause of the damage was either the negligence of the plaintiff or the negligence of a third person. The former is dealt with as one aspect of contributory negligence. It is well illustrated by *Butterfield* v. *Forrester* (*z*). When the immediate cause of the damage is the interference of *a third party*, it does not necessarily follow that the defendant is not liable. If the defendant's negligence is *an effective cause* of the damage, he is liable, although the damage would not have occurred but for the

(*t*) *Per* KELLY, C.B., *Lay* v. *Midland Rail. Co.*, 34 L. T. 30. See also *Harrold* v. *Watney*, [1898] 2 Q. B. 320 [C. A.]; *Jewson* v. *Gatti*, 2 T. L. R. 441 [C. A.]; and *Cooke* v. *Midland Great Western Rail. Co.*, [1909] A. C. 229; discussed and explained in *Glasgow Corporation* v. *Taylor*, [1922] 1 A. C. 44.

(*u*) *Waite* v. *North Eastern Rail. Co.*, El. B. & E. 719 [Ex. Ch.]; and see *Taylor* v. *Dumbarton* (1918), S. C. 96 (H. L.).

(*x*) *Supra*, p. 181.

(*z*) *Supra*, p. 180.

interference of a stranger (*a*). It is, in every case, a question of fact whether the negligence of the defendant was an effective cause of the damage or merely a remote cause (*b*). Art. 84.

ART. 85.—*Onus of Proof. Res ipsa loquitur.*

(1) The onus of proving negligence is on the plaintiff; and that of proving contributory negligence on the defendant (*d*).

(2) But where a thing is solely under the management of the defendant or his servants, and the accident is such as, in the ordinary course of events, does not happen to those having the management of such things and using proper care, the accident itself affords *primâ facie* evidence of negligence (*e*). *Res ipsa loquitur.*

(1) Thus, where a horse of the defendant suddenly bolted without any explainable cause, and, swerving on to the footpath, collided with and injured the plaintiff, it was held that the plaintiff had not produced any evidence of negligence sufficient to entitle him to recover. For it is no negligence to drive a horse along a public street, and horses will occasionally run away without any negligence of the driver (*f*). Runaway horse.

(2) So, also, the mere fact of a motor omnibus skidding on a greasy road is no evidence of negligence, for it is well known that roads are often greasy and that motor omnibuses, however well constructed and designed, have a tendency to skid on slippery roads (*g*). Skidding omnibus.

(*a*) *Engelhart* v. *Farrant*, [1897] 1 Q. B. 243.

(*b*) *McDowall* v. *Great Western Rail. Co.*, [1903] 2 K. B. 331 [C. A.], and see *Rickards* v. *Lothian*, [1913] A. C. 263; *Ruoff* v. *Long*, [1916] 1 K. B. 148.

(*d*) *Dublin, Wicklow, etc. Rail. Co.* v. *Slattery*, 3 App. Cas. 1155, at p. 1169.

(*e*) *Scott* v. *London Dock Co.*, 3 H. & C. 596; *Byrne* v. *Boadle*, 2 H. & C. 722; *Kearney* v. *L. B. & S. C. Ry.* (1871), 6 Q. B. 759.

(*f*) *Manzoni* v. *Douglas*, 6 Q. B. D. 145.

(*g*) *Wing* v. *London General Omnibus Co.*, [1909] 2 K. B. 652 [C. A.].

Art. 85.

Accident capable of two explanations.

(3) So where the body of a dead man was found on the defendants' railway near a level crossing, the man having been killed by a train which bore the usual head-lights but did not whistle, it was held, in an action by the widow, that there was no evidence of negligence on the defendants' part. For, as Lord HALSBURY said: "One may surmise, and it is but surmise and not evidence, that the unfortunate man was knocked down by a passing train while on the level crossing; but assuming in the plaintiff's favour that fact to be established, is there anything to show that the train ran over the man rather than that the man ran against the train?" (*h*).

Accident *primâ facie* due to negligence.

Res ipsa loquitur.

(4) On the other hand, where a person was walking in a public street and a barrel of flour fell upon him from a window of the defendant's house, it was held sufficient *primâ facie* evidence of negligence to cast on the defendant the onus of proving that the accident was not attributable to his want of care. For barrels do not usually fall out of windows in the absence of want of care (*i*). And when a railway train was thrown off the line whereby the plaintiff (a passenger) was injured, and it appeared that the engine, the coaches and the line all belonged to the same company, it was held that there was a *primâ facie* case of negligence, as trains do not run off the line unless there is something wrong with the line, or the train, or the running of the train (*j*). In short, the question must always depend on the nature of the accident. In general, where an accident may be equally susceptible of two explanations, one involving negligence, and the other not, the plaintiff must give some evidence of want of care. But where the probability is that the accident could only have had a negligent origin, the presumption will be reversed.

(*h*) *Wakelin* v. *London and South Western Rail. Co.*, 12 App. Cas. 41. See also *Davey* v. *London and South Western Rail. Co.*, 12 Q. B. D. 70 [C. A.].

(*i*) *Byrne* v. *Boadle*, 33 L. J. Ex. 13; *Kearney* v. *L. B. & S. C. Ry.*, *supra*; *Scott* v. *London Dock Co.*, 3 H. & C. 596.

(*j*) *Carpue* v. *London and Brighton Co.* (1844), 5 Q. B. 747.

Art. 86.

ART. 86.—*Duties of Judge and Jury.*

Whether there is any evidence to be left to the jury from which negligence causing the injury complained of may be reasonably inferred, is a question for the judge.

It is for the jury to say whether, and how far, the evidence is to be believed, and whether, in fact, there was negligence which was the effective cause of the damage (*k*).

That is to say, the judge should not leave the case to the jury merely because there is a *scintilla* of evidence, but should rather decide whether there is any evidence from which negligence may be reasonably inferred, and then leave it to the jury to find whether upon that evidence negligence ought to be inferred (*l*).

ART. 87.—*Volenti non fit Injuria.*

(1) In an action of negligence it is a good defence that the plaintiff, with full knowledge and appreciation of the risk of danger from the defendant's negligence, *voluntarily* accepted the risk and exposed himself to the danger (*m*).

(2) It is a question of fact, not of law, whether the plaintiff voluntarily incurred the risk, and the burden of proof is on the defendant (*n*).

(3) But the doctrine of acceptance of the risk cannot be set up in answer to an action for damages for negligence based on non-fulfilment of a statutory duty (*o*).

(*k*) *Metropolitan Rail. Co.* v. *Jackson*, 3 App. Cas. 193; *Toronto Rail. Co.* v. *King*, [1908] A. C. 260.

(*l*) *Ibid.*, at p. 197.

(*m*) *Smith* v. *Baker & Sons*, [1891] A. C. 325.

(*n*) *Williams* v. *Birmingham Battery Co.*, [1899] 2 Q. B. 338 [C. A.].

(*o*) *Baddeley* v. *Earl Granville*, 19 Q. B. D. 423; cf. *Davies* v. *Owen*, [1919] 2 K. B. 39.

Art. 87.

NOTE.—This rule must be applied with caution. It does not mean that whenever a person knows there is a risk of being injured by another's negligence whilst doing something, he is incapable of recovering in an action if, nevertheless, he does the thing with knowledge of that risk. If it were so, no one could ever bring an action for damages resulting from an accident to a train in which he was travelling, or even for being run over in the street. For everyone who travels by train or walks in the streets knows he runs a certain amount of risk in so doing. But if a person knowing of a particular risk **voluntarily accepts that risk and takes the risk upon himself,** the rule applies. For instance, if a man seeing an express train coming along a line approaching a level crossing, chooses to cross the line in front of it, taking the chance of getting across in time, the rule would apply.

Situations of alternative danger.

Again, the rule does not apply where one person is put by another in a situation of alternative danger, that is to say, one in which he will be in danger if he sits still and in danger if he tries to escape. In such a case any injury he may sustain in taking the course which he thinks best in the circumstances, will be regarded as the consequence of his being wrongfully put in that situation and not of his own voluntary act (*p*).

So, in an action against a coach proprietor for so negligently driving his coach that the plaintiff, a passenger, was obliged to jump off the coach, whereby he broke his leg, Lord ELLENBOROUGH said: "To enable the plaintiff to sustain the action it is not necessary that he should have been thrown off the coach. It is sufficient if he was placed by the misconduct of the defendant in such a situation as obliged him to adopt the alternative of a dangerous leap or to remain at certain peril; if that position was occasioned by the default of the defendant, the action may be supported" (*q*).

Doctrine applied.

When a workman in the employment of a contractor engaged by the defendants had to work in a tunnel rendered

(*p*) *Per* MONTAGU SMITH, J., in *Adams* v. *Lancashire and Yorkshire Rail. Co.*, L. R. 4 C. P. 739, 742; *The George and Richard*, L. R. 3 A. & E. 466.

(*q*) *Jones* v. *Boyce*, 1 Stark. 493; *The Bywell Castle* (1879), 4 P. D. 219; *The Stoomvaart* (1882), 5 App. Cas. 876.

Art. 87.

dangerous by the passing of trains, and after working there a fortnight was injured by a passing train, it was held that the workman, **having continued in his employment with full knowledge,** could not make the railway company liable for an injury arising from the **danger to which he had voluntarily exposed himself,** although the railway company were guilty of negligence (*r*).

Illustration.

The application of the rule has arisen chiefly in questions between employers and workmen, and in a case of this kind (under the Employers' Liability Act), Lord ESHER, M.R., stated the rule in the following words: "It seems to me to amount to this, that mere knowledge of the danger will not do; there must be an assent on the part of the workman to accept the risk with a full appreciation of its extent, to bring the workman within the maxim *Volenti non fit injuria*. If so, that is a question of fact" (*s*). And LINDLEY, L.J., added: "A workman who never in fact engaged to incur a particular danger, but who finds himself exposed to it, and complains of it, cannot, in my opinion, be held as a matter of law to have impliedly agreed to incur that danger, or to have voluntarily incurred it, because he does not refuse to face it. . . . If nothing more is proved than that the workman saw the danger, and reported it, but on being told to go on went on as before, in order to avoid dismissal, a jury may, in my opinion, properly find that he had not agreed to take the risk, and had not acted voluntarily in the sense of having taken the risk upon himself. Fear of dismissal, rather than voluntary action, might properly be inferred" (*t*).

So, too, when a workman, engaged in an employment not in itself dangerous, is exposed to danger arising from an operation in another department over which he has no control, the mere fact that he undertakes or continues in such employment with full knowledge and understanding of the danger is not conclusive to show that he has voluntarily accepted the risk (*u*).

(*r*) *Woodley* v. *Metropolitan District Rail. Co.*, 2 Ex. D. 384.

(*s*) *Yarmouth* v. *France*, 19 Q. B. D. 647, and see *Williams* v. *Birmingham Battery Co.*, [1899] 2 Q. B. 338 [C. A.].

(*t*) *Yarmouth* v. *France*, 19 Q. B. D. 647; *Abbott* v. *Isham* (1920), 90 L. J. K. B. 309; *Baker* v. *James*, [1921] 2 K. B. 674.

(*u*) *Smith* v. *Baker & Sons*, [1891] A. C. 325.

CHAPTER VIII.

LIABILITY FOR BREACH OF DUTY TO PREVENT DAMAGE FROM DANGEROUS THINGS AND ANIMALS.

ART. 88.—*The Rule in Fletcher* v. *Rylands* (*a*).

(1) The person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is *primâ facie* answerable for all the damage which is the consequence of its escape.

(2) He can *excuse* himself by showing—

(a) That the escape was owing to the plaintiff's default, *or*

(b) That the escape was the consequence of the act of God, or *vis major*, *or*

(c) That the escape was due to the wrongful act of a stranger over whom the defendant had no control.

(3) The rule does not apply—

(a) Where the person charged has not himself brought, collected or kept the thing on his land.

(b) Where he has brought or collected and kept it not solely for his own purposes

(*a*) L. R. 1 Ex. 265 [Ex. Ch.]; affirmed in the House of Lords, *sub-nom. Rylands* v. *Fletcher*, L. R. 3 H. L. 330. The first paragraph of the Rule here given is quoted from the judgment of the Exchequer Chamber delivered by BLACKBURN, J. The other paragraphs are taken partly from that judgment and partly from later cases referred to in the explanatory note and illustrations. The application of this principle of liability to those who cause damage (1) by the explosion of materials used in manufacturing processes is exemplified in *Rainham Chemical Works* v. *Belvedere Fish Guano Co.*, [1921] 2 A. C. 465; (2) and by making colliery spoil tips of excessive size, causing a landslide (*Att.-Gen.* v. *Cory Bros.*, [1921] 1 A. C. 521).

Art. 88.

but wholly or in part for the benefit of the person who is damaged by its escape.

(c) If he has statutory authority for bringing, collecting or keeping it on his land.

(4) The defendant is liable, it is submitted, for all the consequences of the escape (*aa*).

Explanation.

The famous case of *Fletcher* v. *Rylands* (*b*) is the leading authority on this rule—in fact, perhaps the first case in which the rule was laid down with precision, though it had been applied in many earlier cases. In a very early case the rule was succinctly stated by saying that it is the duty of a man to keep his own filth in his own ground (*c*). In *Fletcher* v. *Rylands* the dangerous thing was a large body of water. The rule has also been applied to such things as electricity (*d*), yew trees (*e*), wire fencing (*f*), sewage (*g*), explosives (*gg*), and colliery spoil tips (*h*), and (with some modifications) is the foundation of the liability for damage done by animals and fire (*hh*).

Principle of rule.

The principle of the rule is that a person who brings on his land for his own purposes a thing of the kind mentioned in the rule, *must keep it at his peril*, and is *primâ facie* answerable for all the damage which is the consequence of its escape.

Excuses.

BLACKBURN, J., says: "He can excuse himself by shewing that the escape was owing to the plaintiff's default (*i*), or *perhaps* that the escape was the consequence

(*aa*) *Re Polemis and Furness, Withy & Co.* (see Arts. 5 and 37).

(*b*) L. R. 1 Ex. 265; L. R. 3 H. L. 350.

(*c*) *Tenant* v. *Goldwin*, 1 Salk. 360; 2 Lord Raym. 1089.

(*d*) *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; *Eastern and South African Telegraph Co.* v. *Cape Town Tramways Co.*, [1902] A. C. 381 [P. C.].

(*e*) *Crowhurst* v. *Amersham Burial Board*, 4 Ex. D. 5.

(*f*) *Firth* v. *Bowling Iron Co.*, 3 C. P. D. 254.

(*g*) *Tenant* v. *Goldwin, supra*; *Ballard* v. *Tomlinson*, 29 Ch. D. 115 [C. A.]; *Foster* v. *Warblington Urban Council*, [1906] 1 K. B. 648 [C. A.].

(*gg*) *Rainham Chemical Works* v. *Belvedere Fish Guano Co., supra*.

(*h*) *Att.-Gen.* v. *Cory Bros., supra*; but see *Hoare & Co.* v. *McAlpine*, [1923] 1 Ch. 167.

(*hh*) See Arts. 89, 90.

(*i*) See Art. 11, *ante*.

of *vis major*, or the act of God; but as nothing of this sort exists here it would be unnecessary to inquire what excuse would be sufficient" (*j*). Art. 88.

This leading case is then an authority for saying that failure to keep from escaping a dangerous thing brought on your land for your own purposes gives rise to a *primâ facie* liability for the damage naturally resulting from such escape. It goes no further than this, as no evidence was brought before the court to provide excuses for the escape of the water, and so to rebut the *primâ facie* case against the defendant.

Illustrations.

(1) The plaintiff was the lessee of mines. The defendant was the owner of a mill, standing on land adjoining that under which the mines were worked. The defendant desired to construct a reservoir, and **employed competent persons** to construct it. The plaintiff had worked his mines up to a spot where there were certain old passages of disused mines; these passages were connected with vertical shafts communicating with the land above, which had also been out of use for years, and were apparently filled with marl and earth of the surrounding land. Shortly after the water had been introduced into the reservoir it broke through some of the vertical shafts, flowed thence through the old passages, and finally flooded the plaintiff's mine. The gist of the action was the collecting of the water and *not keeping it from escaping*, and to the *primâ facie* case raised by these facts the defendants offered no answer (*j*).

In 1875 the next important case (*k*) which followed this decision raised the question of what would amount to an answer to the *primâ facie* case set up in *Rylands* v. *Fletcher*; and it was decided that in the absence of negligence on the part of the defendant, act of God or *vis major* causing the escape of the dangerous thing amounts to an excuse, and such defendant is consequently not liable for the resultant damage.

(*j*) *Rylands* v. *Fletcher* (1868), L. R. 3 H. L., at p. 340.

(*k*) *Nichols* v. *Marsland*, 2 Ex. D. 1 [C. A.]; *Greenock Corporation* v. *Caledonian Rail. Co.*, [1917] A. C., distinguished at bottom of p. 573.

Art. 88.

Act of God.

(2) On the defendant's land were artificial pools containing large quantities of water. These pools had been formed by damming up, with artificial embankments, a natural stream, which rose above the defendant's land and flowed through it, and which was allowed to escape from the pools by successive weirs into its original course. An *extraordinary* rainfall caused the stream and the water in the pools to swell, so that the artificial embankment was carried away by the pressure, and the water in the pools, being suddenly loosed, rushed down the course of the stream and injured the plaintiff's adjoining property. The plaintiff having brought an action against the defendant for damages, the jury found that there was no negligence in the construction or maintenance of the pools, and that the flood was so great that it **could not reasonably have been anticipated.** The court found that this was in substance a finding that the escape of the water was caused by the act of God or *vis major*, and that accordingly the defendant was not liable (*l*).

This was followed in 1879 (*m*) by a decision that where a third party over whom the defendant has no control brings a dangerous article on to defendant's land and thereby causes this new danger and the defendant's article to escape, in the absence of negligence on the part of the defendant he is not liable for the damage resulting from the third party's action.

Box v. *Jubb.*
Third party bringing thing on to defendant's land.

(3) And so again where the reservoir of the defendant was caused to overflow by a third party sending a great quantity of water down the drain which supplied it, and damage was done to the plaintiff, it was held that the defendant was not liable ; for the overflow was not caused by anything which he had done, nor had he any reasonable means of preventing it. As POLLOCK, B., said : " Here this *water has not been accumulated by the defendants*, but has come from elsewhere and added to that which was properly and safely there. For this the defendants . . . cannot be held liable " (*m*).

(*l*) *Nichols* v. *Marsland, supra.*
(*m*) *Box* v. *Jubb*, 4 Ex. D. 76.

Art. 88.

In 1913 the Judicial Committee of the Privy Council decided that where the escape of the dangerous article is caused by the malicious act of a third person over whom the defendant had no control, and without negligence on the part of the defendant, the latter is not liable for damage which results from such escape (*n*).

(4) Where the defendant was lessee of a building and plaintiff his tenant of part of the second floor, the plaintiff's premises were damaged through the flow of water from the lavatory on the fourth floor due to the turning on of the water-taps and plugging up of the waste-pipes by the malicious act of a third person over whom the defendant had no control, it was held that as no negligence on the part of defendant was shown and as it was not reasonable that the defendant should have anticipated the interference of the third party which actually caused the escape of the water, the defendant could not be said to have caused its escape and in consequence was not liable (*n*). A distinction was drawn in this case between the natural and non-natural user of property (*o*).

Escape of water falling on land.

It has been held that this rule *does not apply* where the water which escapes has accumulated on the defendant's land by *natural causes*, and the defendant has done nothing to cause it to accumulate (*p*), and has taken no active means to direct its escape on to his neighbour's land ; but the rule does not prohibit the defendant from taking steps to *prevent* a threatened flooding and such steps cause the water so diverted to flow on to another's land (*q*).

Not for his own purposes.

(5) The defendant was owner of a house which he let out in floors to separate tenants. The different floors were supplied with water from a cistern at the top of the house. One of the supply pipes burst and the plaintiff's tenement, in the basement, was flooded. As the defendant had stored the water for the benefit of the plaintiff (along

(*n*) *Rickards* v. *Lothian*, [1913] A. C. 263.

(*o*) [1913] A. C., at p. 280 ; and compare the reasoning in this case with that in *Ruoff* v. *Long & Co.*, [1916] 1 K. B. 148.

(*p*) *Wilson* v. *Waddell*, 2 App. Cas. 95 ; and see *Fletcher* v. *Smith*, 2 App. Cas. 781.

(*q*) *Whalley* v. *Lancashire and Yorkshire Rail. Co.*, 13 Q. B. D. 131 [C. A.] ; *Gerard* v. *Crowe*, [1921] 1 A. C. 395 [P. C.].

Art. 88. with the other tenants) he was not liable in the absence of negligence (*r*). And the same rule applies where water is stored partly for the plaintiff's benefit and partly for the defendant's (*s*).

Yew trees and thistles.

(6) If a person plants on his own land yew trees and they grow so that the branches project over his neighbour's land, and his neighbour's horses and cattle eat of them and are poisoned, the person planting the yew trees is liable for this natural consequence of their escape (*t*). But he is not liable if his neighbour's cattle stray on to his land and eat them; for it is his neighbour's duty to keep his cattle from straying (*u*). Also a landlord is not liable if he lets premises adjoining his own with his yew trees overhanging the premises let at the time the letting begins, for the tenant must take the premises as he finds them (*v*). Nor is he liable if he **has not planted them** on his land and clippings escape on to his neighbour's land without his knowledge (*w*). So also a person is not liable for the escape from his land of thistle seeds, when the thistles have grown naturally on his own land (*x*); nor is he liable for turning away from his land a swarm of noxious insects which settle elsewhere and do damage (*xx*).

ART. 89.—*Damage by Animals.*

(1) A person who keeps a **wild animal** or a **domestic animal known by him to be vicious** keeps it at his peril, and is liable for all the natural consequences of his not keeping it securely, such as attacks on mankind (*y*).

(*r*) *Anderson* v. *Oppenheimer*, 5 Q. B. D. 602 [C. A.].

(*s*) *Carstairs* v. *Taylor*, L. R. 6 Ex. 217; *Whitmores Edenbridge, Limited* v. *Stanford*, [1909] 1 Ch. 427.

(*t*) *Crowhurst* v. *Amersham Burial Board*, 4 Ex. D. 5, explaining *Wilson* v. *Newberry*, L. R. 7 Q. B. 31.

(*u*) *Ponting* v. *Noakes*, [1894] 2 Q. B. 281.

(*v*) *Cheater* v. *Cater*, [1918] 1 K. B. 247.

(*w*) *Wilson* v. *Newberry*, L. R. 7 Q. B. 31.

(*x*) *Giles* v. *Walker*, 24 Q. B. D. 656.

(*xx*) *Greyvensteyn* v. *Hattingh*, [1911] A. C. 355 [P. C.].

(*y*) *Filburn* v. *People's Palace*, 25 Q. B. D. 258 [C. A.]; *Baker* v. *Snell*, [1908] 2 K. B. 825.

Art. 89.

(2) But the owner of a *dog* is liable for any injury it causes to *cattle, sheep, horses, etc.*, although he does not know it has any propensity to attack them (*z*).

(3) A person who keeps a dog (*a*) or other domestic animal is not liable for the consequences of its attacking *mankind* unless he keeps it with knowledge that it has a propensity to attack mankind (*aa*).

Explanations.

Animals are of two kinds in law :

(i) **Wild animals,** *i.e.*, animals which are not ordinarily kept in captivity in this country.

This class includes elephants (*b*), bears (*c*), monkeys (*d*), and doubtless many others. These animals a man keeps at his peril, whether or not he knows that the particular specimen is dangerous.

(ii) **Domestic animals,** including dogs (*e*), horses (*f*), bulls (*g*), rams (*h*), and others.

These animals are not, in theory of law, necessarily dangerous, and an owner does not keep them at his peril, unless in the particular case he knows the animal is dangerous. If he knows the animal is dangerous he

(*z*) Dogs Act, 1906 (6 Edw. 7, c. 32), s. 1 (1); note that the occupier of the premises where the dog was permitted to live or remain at the time of the injury is presumed to be the owner (s. 1 (2)).

(*a*) But a man is not liable for what is done by a dog belonging to his seventeen-year-old daughter who lives with him (*North* v. *Wood*, [1914] 1 K. B. 629).

(*aa*) *Cox* v. *Burbidge*, 13 C. B. (N.S.) 430; *Osborne* v. *Chocqueel*, [1896] 2 Q. B. 109; but see *Clinton* v. *J. Lyons & Co., Limited*, [1912] 3 K. B. 198.

(*b*) *Filburn* v. *People's Palace*, 25 Q. B. D. 258.

(*c*) *Besozzi* v. *Harris*, 1 F. & F. 92.

(*d*) *May* v. *Burdett*, 9 Q. B. 101.

(*e*) *Baker* v. *Snell*, [1908] 2 K. B. 825.

(*f*) *Cox* v. *Burbidge*, 13 C. B. (N.S.) 430.

(*g*) *Hudson* v. *Roberts*, 6 Ex. 697.

(*h*) *Jackson* v. *Smithson*, 15 M. & Q. 563.

Art. 89.

keeps it at his peril just as if it were a wild animal. The case of *Baker* v. *Snell* (*j*) is quoted as the authority for saying that the keeper of an animal known to be dangerous keeps it at his peril and is liable for damage, however caused, which results from its activities. This appears to be the decision of COZENS HARDY, M.R., and FARWELL, L.J., based apparently on the view that to keep an animal knowing it is dangerous is of itself a wrongful act. These judges in their judgments refer with approval to the words respectively of MELLISH, L.J., in *Nichols* v. *Marsland* (*k*), and BLACKBURN, J., in *Rylands* v. *Fletcher* (*l*), delivering the judgments of their respective courts, where the person who brings and keeps a dangerous thing on his land is held to be answerable for damage done by not keeping it secure, subject to the exceptions of act of God, *vis major*, or the plaintiff's own default. Yet BLACKBURN, J., says that a man is subject to an equal degree of liability for whatever he keeps that is likely to do mischief, and this dictum, contained in this judgment, is quoted with approval by KENNEDY, L.J., in his dissenting judgment in *Baker* v. *Snell* (at p. 835), where he takes the view, apparently supported by CHANNELL, J., in the court below, that the liability of the keeper is made out *primâ facie only* by the damage caused by the action of the dangerous thing. If this view be correct, then the keeper of the dangerous thing is entitled to put forward a ground of exemption from liability if he can show such ground. In *Nichols* v. *Marsland*, act of God or *vis major* was held, in the absence of negligence, and where it was the sole cause of the escape of the danger, to be a ground of exemption ; and based on that decision is the recent decision of *Rickards* v. *Lothian* (*m*), where in the absence of negligence the malicious act of a third party was held also to be a ground of exemption from liability for resultant damage. It is submitted that, despite the actual decision in *Baker* v. *Snell*, there are strong grounds for the view that the liability for *any* dangerous article brought and kept on the defendant's land is on the same basis, and that *Rickards* v. *Lothian* now represents the true view of such liability.

(*j*) [1908] 2 K. B. 825.
(*k*) L. R. 10 Ex. 255.
(*l*) L. R. 1 Ex. 265.
(*m*) [1913] A. C. 263.

Art. 89.

Knowledge of the savage character of an animal is usually called *scienter*. The plaintiff in suing for damages for a bite of the defendant's dog must always prove *scienter*. If he does not, he will fail. In the case of dogs, it is usually proved by evidence that the dog has, to the knowledge of the defendant, on a previous occasion bitten or attempted to bite a human being (*n*). It may be proved in other ways, as, for instance, by evidence that the defendant had told people "to beware of the dog" (*o*). It must be proved that the dog was known to be "**accustomed to bite mankind.**" Accordingly it is not enough to prove a previous tendency to bite other animals—for an animal may be disposed to bite other animals and yet not savage *qua* human beings (*p*).

Scienter.

It has been held that, if the owner of the dog appoints a servant to *keep it*, the servant's knowledge of the animal's disposition is the knowledge of the master, for it is knowledge acquired by him in relation to a matter within the scope of his employment (*q*). But if another basis for the action can be found, *e.g.*, trespass, then the need to prove *scienter* no longer exists (*r*).

Scienter must be proved even in the case of such animals as bulls and rams, though it is well known that they are often dangerous; but no proof of *scienter* is necessary where a human being is attacked by the usually harmless elephant. He is in contemplation of law a wild animal which any person keeps at his peril (*t*).

Bulls.

Though there is no duty on the occupier of land adjoining a highway either to fence his land or otherwise to keep normal domestic animals from straying or getting on to the highway, and he is not liable for the consequences of their so straying (*u*), yet where the animal complained of is

Animals straying on to highway.

(*n*) A proof of an *attempt* to bite is enough (*Worth* v. *Gilling*, L. R. 2 C. P. 1).

(*o*) *Judge* v. *Cox*, 1 Stark. 285; *Hudson* v. *Roberts*, 6 Ex. 697.

(*p*) *Osborne* v. *Chocqueel*, [1896] 2 Q. B. 109.

(*q*) *Baldwin* v. *Casella*, L. R. 7 Ex. 325.

(*r*) *Theyer* v. *Purnell*, [1918] 2 K. B. 333.

(*t*) *Filburn* v. *People's Palace*, 25 Q. B. D. 258.

(*u*) *Cox* v. *Burbidge*, 13 C. B. (N.S.) 430; *Jones* v. *Lee* (1912), 106 L. T. 123; *Heath's Garage* v. *Hodges*, [1916] 2 K. B. 370 [C. A.].

Art. 89.

feræ naturæ, or has dangerous tendencies of which the owner knew or ought to have known, a duty to keep it under control arises, and for damage resultant on failure to control it the owner is liable (*uu*).

Animals straying from highways.

It may be added that where a person is lawfully using a public highway for driving an animal, he is not under an absolute liability to prevent it from straying. If *without negligence on his part* (*v*) it leaves the highway and does damage to an adjoining owner's land, he is not liable; for, though a man must keep his animals from trespassing from his own land on to his neighbour's, there is no obligation on persons using a highway to fence it, and the owner of land adjoining a highway must protect himself (*w*). Of course this will not justify wilful trespass, or even negligence in allowing animals to trespass from a highway.

Trespass by domestic animals.

There is a duty on a man to keep his cattle from straying on to another's land, and if they do so he is liable in trespass for the consequences of their so doing. So, if a horse gets out of a field through a defective fence and trespasses on another's land, the owner is liable for the damage arising from the trespass (*x*). And even if a horse merely kicks another **through a fence,** the owner may be liable, as it is a trespass even to put one foot over the boundary of another's land (*y*). As between two adjoining owners of land there may, however, be a duty imposed on one by grant or prescription to fence for the benefit of the other. If animals stray by reason of a neglect of this duty, such straying is not actionable (*z*).

Where the defendant put a mare for agistment into a field where plaintiff's horse was being agisted, and the mare kicked the horse so that he had to be destroyed, it was *held* that since the defendant had no knowledge that the

(*uu*) *Rylands* v. *Fletcher*, *supra*.

(*v*) *Gayler* v. *B. Davies & Son*, [1924] 2 K. B. 75.

(*w*) *Tillett* v. *Ward*, 10 Q. B. D. 17. The owner of cattle straying on to land is bound to remove them within a reasonable time, *i.e.*, reasonable in all the circumstances (*Goodwyn* v. *Cheveley*, 4 H. & N. 631).

(*x*) *Lee* v. *Riley*, 18 C. B. (N.S.) 722; distinguished in *Manton* v. *Brocklebank*, [1923] 2 K. B. 212.

(*y*) *Ellis* v. *Loftus Iron Co.*, L. R. 10 C. P. 10.

(*z*) See *Boyle* v. *Tamlyn*, 6 B. & C. 329.

Art. 89.

mare had a special propensity to kick other horses, and that the circumstances gave rise to no presumption that she would do so, he was entitled to place the mare in the field without being under any duty to give notice to the plaintiff that he had done so or otherwise to take more care of her than of an ordinary domestic animal (*zz*).

Liability to trespassers.

In *Lowery* v. *Walker* (*a*) it was held in the Court of Appeal that an occupier of land who kept on it a horse which he knew was bad-tempered and prone to bite, was **not liable to a trespasser** who was bitten. In the House of Lords the decision was reversed on the ground that the plaintiff was not a trespasser; but the decision in the Court of Appeal seems to be sound, on the assumption that the plaintiff was a trespasser. If it were not so, no farmer could safely keep a savage bull. But towards licensees the general proposition applies, and the owner is bound to secure them from injury by an animal which he knows to be savage.

ART. 90.—*Duty to keep Fire from doing Mischief.*

(1) If a person **intentionally** makes a fire on his land he must see that it does no harm to others and answer the damage if it does (*b*).

(2) If a person **by his negligence** allows a fire to arise on his land he is liable if it spreads to his neighbour's land and does damage (*c*).

(3) If a fire **accidentally** arises on a person's land and it spreads without negligence on his part he is not answerable (*d*).

(*zz*) *Manton* v. *Brocklebank*, [1923] 2 K. B. 212 [C. A.].

(*a*) [1910] 1 K. B. 173 [C. A.]; reversed, [1911] A. C. 10.

(*b*) *Tubervil* v. *Stamp*, 1 Salk. 13.

(*c*) *Vaughan* v. *Menlove*, 3 Bing. N. C. 468; *Filliter* v. *Phippard*, 11 Q. B. 347.

(*d*) Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), s. 86, not limited to the metropolis. See *Filliter* v. *Phippard*, 11 Q. B. 347; and as to what is and what is not an accidental fire, see *Musgrove* v. *Pandelis*, [1919] 2 K. B. 43; *Job Edwards* v. *Birmingham Navigations*, [1924] 1 K. B. 350 [C. A.].

Art. 90.

(4) Where a person brings fire into dangerous proximity to another's land **without statutory authority** he does so at his peril, and is liable if it does damage (*e*). If he has statutory authority he is only liable if the damage results from negligence in using his statutory powers (*f*).

Explanation.

Fire is obviously a thing which, if not kept within bounds, may do great mischief, and the common law rule seems to be that a person lights any fire on his land or in his house **at his peril**; though he is not liable for damage done by a fire which begins accidentally (*i.e.*, without negligence) or is lighted by a third person, except where the damage results from the spreading of the fire and he is negligent in permitting it to spread.

Illustrations.

Where the defendant's servant, cleaning his car in plaintiff's garage, turned the starting handle and a flame shot up from the carburettor, whereupon the servant neglected at once to turn off the petrol supply tap, with the result that the fire extended to the tanks and thence damaged plaintiff's garage, it was held that s. 86 of the Fires Prevention (Metropolis) Act, 1774, was no defence, because (1) the fire which caused the damage was not the fire in the carburettor, but the subsequent one in the petrol tanks caused by the servant's neglect to turn off the petrol supply tap; (2) that the statute left unaffected the common-law liability of the defendant as owner of a potentially dangerous thing which causes damage. Defendant was therefore liable (*g*).

Liability of railway companies.

A person who, *without statutory authority*, uses a steam-engine on a highway or a railway, is liable for all damage done by escaping sparks setting fire to crops, etc., quite apart from negligence. He uses the fire at his peril (*h*).

(*e*) *Mansel* v. *Webb* (1918), 88 L. J. K. B. 323.

(*f*) *Jones* v. *Festiniog Rail. Co.*, L. R. 3 Q. B. 733; *Powell* v. *Fall*, 5 Q. B. D. 597 [C. A.]; *Smith* v. *London and South Western Rail. Co.*, L. R. 6 C. P. 14 [Ex. Ch.].

(*g*) *Musgrove* v. *Pandelis*, [1919] 2 K. B. 43.

(*h*) *Jones* v. *Festiniog Rail. Co.*, L. R. 3 Q. B. 733; *Powell* v. *Fall*, 5 Q. B. D. 597; *Mansel* v. *Webb*, *supra*; cf. *Wing* v. *London General Omnibus Co.*, [1909] 2 K. B. 652.

Art. 90.

But railway companies which have statutory authority for using locomotives are, as we have seen, protected by their statutory authority from this absolute liability, and are, at common law, not liable for fires caused by sparks without negligence (*i*). But they are liable if they cause fires by their negligence (*j*). But when the statutory authority is not directive but discretionary due consideration must be given to the rights of others (*k*).

Railway Fires Act, 1905.

By the Railway Fires Act, 1905, and by the Railway Fires Act (1905) Amendment Act, 1923 (*l*), railway companies are made responsible for damage done to agricultural land or agricultural crops by fire arising from sparks from locomotive engines, **notwithstanding that the engine is used with statutory authority,** provided the claim for damage does not exceed £100. Railway companies are by the same Act given powers of entering on land for the purpose of extinguishing or arresting fire, and of doing certain things to diminish the risk of fire.

(*i*) *Vaughan* v. *Taff Vale Rail. Co.*, 5 H. & N. 679 [Ex. Ch.].
(*j*) *Smith* v. *London and South Western Rail. Co.*, L. R. 6 C. P. 14 [Ex. Ch.].
(*k*) *Morrison* v. *Sheffield Corporation*, [1917] 2 K. B. 866.
(*l*) *Att.-Gen.* v. *G. W. Ry.*, [1924] 2 K. B. 1.

CHAPTER IX.

LIABILITY OF EMPLOYERS FOR INJURIES TO THEIR SERVANTS AND WORKMEN.

SECTION I.—COMMON-LAW LIABILITY.

We have seen (*ante*, Art. 27) that generally a master is liable for the negligence of his servants committed in the course of their employment; but the liability of a master to his servant for an injury resulting from the negligence of a fellow-servant differs materially from his liability to a third party for a similar injury, by reason of the common-law rule that a master is not so liable where the injurer and the injured are the servants of a common master in a common employment, and the injury was inflicted in the course of that employment.

Common employment.

This rule, known as the doctrine of common employment, was founded on the idea that the servant takes all the risks incident to his employment as part of the contract of service. With regard to servants generally it still exists, but with regard to certain classes of servants Parliament has of late years made large exceptions to it (1) by the Employers' Liability Act, 1880, and (2) by the Workmen's Compensation Act, 1906. **The Employers' Liability Act, 1880, does not abolish the doctrine of common employment,** but it gives a remedy by action for damages in certain specific cases to servants who are injured by the negligence of their fellow-servants in the course of their employment.

Employers' Liability Act.

Workmen's Compensation Act.

The Workmen's Compensation Act does not abolish the doctrine of common employment or repeal the Employers' Liability Act, but it gives to all servants to whom it applies a statutory right to be compensated by their masters for accidents suffered by them in the course of and arising out of their employment, whether such accidents are caused by the negligence of a fellow-servant or not. In

other words, it gives to servants to whom it applies a right to compensation quite independent of any tort whatever. Its consideration, therefore, does not fall strictly within the scope of this work. But the importance of the subject is such that the student may reasonably expect to find some account of the Act and its main provisions.

ART. 91.—*The Doctrine of Common Employment.*

(1) A master is not liable to his servant for damage resulting from the negligence or unskilfulness of his fellow-servant in the course of their common employment.

(2) The doctrine only applies when there is both a common master and common employment under that master.

(3) Common employment does not necessarily imply that both servants should be engaged in the same or even similar acts, or in the same grade of employment, so long as the risk of injury from the one is so much a natural and necessary consequence of the employment which the other accepts, that it must be included in the risks which must be contemplated as incident thereto (*a*). And the defence of common employment is good against an infant (*b*).

(4) A master who is personally negligent is liable to his servant for damage resulting from such negligence; and such negligence may consist in—

(a) employing another servant knowing him to be incompetent or without making

(*a*) *Morgan* v. *Vale of Neath Rail. Co.*, L. R. 1 Q. B. 149 [Ex. Ch.]; *Allen* v. *New Gas Co.*, 1 Ex. D. 251.

(*b*) *Heasmer* v. *Pickfords, Limited* (1920), 36 T. L. R. 818.

Art. 91.

proper inquiries as to his competence (*c*);

(b) retaining in his employment a servant whom he knows to be habitually negligent (*d*);

(c) allowing the premises, plant or machinery to be in a dangerous condition, when he knew or might have known they were dangerous (*e*);

(d) breach of an absolute unqualified duty imposed upon the employer by statute to do something for the protection of workmen (*f*).

Explanation of rule.

The rule was first established in *Priestley* v. *Fowler* (*g*). In that case a butcher's man was ordered to deliver meat from a van. The van was overloaded by the negligence of a fellow-servant, in consequence of which it broke down and the butcher's man was hurt. The master was held not liable.

It was further established in *Hutchinson* v. *York, Newcastle and Berwick Rail. Co.* (*h*), in which it was held that where a servant of a railway company in discharge of his duty as such was proceeding in a train under the guidance of other servants of the company, through whose negligence a collision took place, and he was killed, his personal representatives had no cause of action. The foundation of the doctrine is "that, under the circumstances, the injured person must be taken to have accepted the risks involved by putting himself in juxtaposition with other persons employed by the same employer, whose presence is incidental to the occupation in which he is engaged, and

(*c*) *Tarrant* v. *Webb*, 18 C. B. 797.

(*d*) See *Senior* v. *Ward*, 28 L. J. Q. B. 139.

(*e*) *Williams* v. *Birmingham Battery, etc. Co.*, [1899] 2 Q. B. 338 [C. A.].

(*f*) *Groves* v. *Lord Wimborne*, [1898] 2 Q. B. 402 [C. A.]. See *Butler* v. *Fife Coal Co.*, [1912] A. C. 149; *Watkins* v. *Naval Colliery Co.*, [1912] A. C. 693.

(*g*) (1837) 3 M. & W. 1. (*h*) (1850) 5 Ex. 343.

Art. 91. cannot complain of that which is a necessary or reasonable incident of the situation in which he has voluntarily placed himself" (*i*).

Illustrations. Common employment.

(1) The driver and guard of a stage-coach; the steersman and rowers of a boat; the man who draws the red-hot iron from the forge, and the man who hammers it into shape; the person who lets down into, or draws up from, a pit the miners working therein, and the miners themselves; all these are fellow-servants within the meaning of the doctrine (*j*); and so are the captain of a ship and the sailors employed under him (*k*); and the scene-shifter and the chorus girl engaged to sing in a pantomime (*l*).

(2) In *Morgan* v. *Vale of Neath Rail Co.* (*m*), the plaintiff was in the employ of a railway company as a carpenter, to do any carpenter's work for the general purposes of the company. He was standing on a scaffolding at work on a shed close to the line of railway, and some porters in the service of the company carelessly shifted an engine on a turntable, so that it struck a ladder supporting the scaffold, by which means the plaintiff was thrown to the ground and injured. It was held, however, that he could not recover against the company; on the ground that whenever an employment in the service of a railway company is such as necessarily to bring the person accepting it into contact with the traffic of the line, risk of injury from the carelessness of those managing that traffic is one of the risks necessarily and naturally incident to that employment.

(3) Where a workman was, after his day's work was done, going home in a train which the colliery company ran voluntarily for the convenience of the colliers and was killed by the negligence of a servant of the company

(*i*) *Per* COLLINS, M.R., in *Burr* v. *Theatre Royal, Drury Lane, Limited,* [1907] 1 K. B. 544 [C. A.], at p. 554.

(*j*) *Barton's Hill Coal Co.* v. *Reid,* 4 Jur.,(N.S.) 767 [H. L.].

(*k*) *Hedley* v. *Pinkney & Sons Steamship Co.,* [1892] 1 Q. B. 58 [C. A.].

(*l*) *Burr* v. *Theatre Royal, Drury Lane, Limited,* [1907] 1 K. B. 544.

(*m*) L. R. 1 Q. B. 149 [Ex. Ch.].

Art. 91.

employed in mending a bridge, it was held that the collier and the other were in common employment, though the accident happened whilst the deceased was not being actually employed, as he must be deemed to have undertaken the risk of such an accident (*n*).

Common master but not common employment.

(4) But when a collision occurred between two steamships belonging to the same owners, it was held that the crew of ship A. were not in common employment with the crew of ship B. (although employed by the same masters), so as to protect the owners from liability to the crew of ship A. for the negligence of their servants, the crew of ship B. (*o*).

Common employment but not common master.

(5) Where one of two railway companies has the user of the other's station, but not the control of its servants employed on such station, one of whom is injured by the negligence of a servant of the company having such right of user, the rule does not apply, for the men though in common employment are not in the employment of a common master (*p*).

(6) And so the rule does not apply where one servant is the servant of a contractor, and the other is the servant of the person who employs the contractor, for the servant of the contractor is not the servant of the contractor's employer; or where the person injured is a servant of one contractor, and the person by whose negligence he is injured is the servant of another contractor (*q*).

Personal negligence of master.

(7) Whilst a workman was in the course of his employment descending from an elevated tramway belonging to his employers his foot slipped and he fell to the ground and received injuries. His employers had provided no ladder or other safe means of descending from the tramway. In an action brought against the employers it was proved that it was dangerous to descend without a ladder, and that

(*n*) *Coldrick* v. *Partridge, Jones & Co.*, [1910] A. C. 77.

(*o*) *The Petrel*, [1893] P. 320.

(*p*) *Warburton* v. *Great Western Rail. Co.*, L. R. 2 Ex. 30; *Swainson* v. *North Eastern Rail. Co.*, 3 Ex. D. 341 [C. A.].

(*q*) *Johnson* v. *Lindsay*, [1891] A. C. 371.

Art. 91. the employers knew this, and knew there was no ladder. On this it was held they were liable for personal negligence. If proper appliances had been provided and they had got out of order without the knowledge of the employers they would not have been liable (*r*).

(8) A workman was injured in consequence of a breach by his employer of a statutory duty to maintain fencing for dangerous machinery, imposed by the Factory and Workshop Act, 1878. For the breach of this absolute duty he had a right of action, and it was no defence that the defect in the fence was due to the negligence of a fellow-workman (*s*).

ART. 92.—*Volunteer Servants—Volenti non fit Injuria.*

If a stranger *invited by a servant to assist* him in his work, or who volunteers to assist him in his work, is, while giving such assistance, injured by the negligence of another servant of the same master, the doctrine of common employment applies, and no action will lie *at common law* against the master.

Explanation. The reason of this rule is obvious, for the volunteer, by aiding the servant, is simply of his own accord placing himself in the position of a servant, and that without the consent or request of the master. He has taken upon himself the risk of the common employment, and he cannot impose on the master a greater liability than that in which the master stands towards his own servants.

Thus, where the servants of a railway company were turning a truck on a turntable, and a person not in the employ of the company volunteered to assist them, and, whilst so engaged, other servants of the company negli-

(*r*) *Williams* v. *Birmingham Battery and Metal Co.*, [1899] 2 Q. B. 338 [C. A.].

(*s*) *Groves* v. *Lord Wimborne*, [1898] 2 Q. B. 402 [C. A.].

gently propelled a locomotive against, and so killed, the volunteer, it was held that the company was not liable (*t*). Art. 92.

Where a person aids the servants of another, with such other's consent or acquiescence, and not as a mere volunteer, but for the purpose of expediting some business of his own, he is not considered to be in a position of a servant *pro tempore* and consequently can recover (*u*). Exception

SECTION II.—THE EMPLOYERS' LIABILITY ACT, 1880 (*v*).

ART. 93.—*Epitome of Act.*

(1) In the case of railway servants, labourers, husbandmen, journeymen, artificers, handicraftsmen, miners, and other persons engaged in manual labour and not being domestic or menial servants, an employer cannot set up the defence of common employment in any case where the injury complained of is due to any of the following causes, viz. :

(a) A defect in the condition of the ways, works, machinery, or plant which arose from, or had not been discovered or remedied owing to the *negligence* of the employer, or of some person entrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition. This includes original defectiveness or unsuitability for its task of the plant, etc., employed.

(*t*) *Degg* v. *Midland Rail. Co.*, 1 H. & N. 773 ; *Potter* v. *Faulkner*, 1 B. & S. 800 [Ex. Ch.].

(*u*) *Wright* v. *London and North Western Rail. Co.*, 1 Q. B. D. 252 [C. A.] ; *Hayward* v. *Drury Lane Theatre, Limited*, [1917] 2 K. B. 899.

(*v*) 43 & 44 Vict. c. 42.

Art. 93.

(b) The *negligence* in the exercise of superintendence of any person in the service of the employer whose sole or principal duty is superintendence, and who is not ordinarily engaged in manual labour.

(c) The *negligence* of a person in the employment of the master to whose orders or directions the servant at the time of the injury was bound to conform and did conform.

(d) An act or omission of any person in the service of the employer done or made **in obedience to the rules or byelaws of the employer** (not approved by a Government department), or **in obedience to particular instructions** given by any person delegated with the authority of the employer.

(e) The **negligence** of any person in the service of the employer having the charge or control of any signal-points, locomotive-engine, or train upon a railway.

But the workman injured in each of the above cases cannot recover if he knew of the negligence or defect and did not complain of it to a superior within a reasonable time, unless he was aware the superior or employer already knew of such negligence or defect.

Notice of accident.

(2) The injured servant, or his representatives, must give notice of his claim to the employer *within six weeks* of the accident, unless, in case of death, the judge thinks there was reasonable excuse for not giving it.

Art. 93.

(3) The action must be commenced by the injured servant *within six months*, or by his personal representatives (if he is killed) within *twelve months*.

(4) The action must be brought in the County Court, but is removable, under very exceptional circumstances, to the High Court.

(5) The damages are limited to three years' average earnings; which is the *maximum award*, not the basis of calculation.

(6) The action is an action for negligence, and any defence available at common law (except that of common employment) is good (*w*), as, for instance, contributory negligence (*x*), *volenti non fit injuria* (*y*), or that the workman has contracted himself out of the Act (*z*).

Class of servants to which the Act applies.

It will be perceived that this Act applies only to a limited class of employees. Thus, a grocer's assistant is not a person engaged in manual labour within the meaning of the Act (*a*); nor is the driver of a tramcar (*b*); nor an omnibus conductor (*c*). And it only applies to accidents happening by reason of negligence of the specific kinds enumerated in the Act. It does not abolish the doctrine of common employment generally, nor on the other hand does it give an injured servant a right of action unless he can prove negligence on the part of the master or some fellow-servant of the kind specified.

(*w*) *Per* SMITH, J., in *Weblin* v. *Ballard*, 17 Q. B. D. 122, at p. 125.

(*x*) *Stuart* v. *Evans*, 31 W. R. 706.

(*y*) *Thomas* v. *Quartermaine*, 18 Q. B. D. 685 [C. A.]. See *Yarmouth* v. *France*, *ante*, p. 187.

(*z*) *Griffiths* v. *Earl of Dudley*, 9 Q. B. D. 357.

(*a*) *Bound* v. *Lawrence*, [1892] 1 Q. B. 226 [C. A.].

(*b*) *Cook* v. *North Metropolitan Tramways Co.*, 18 Q. B. D. 683.

(*c*) *Morgan* v. *London General Omnibus Co.*, 13 Q. B. D. 832 [C. A.].

Art. 93.

SECTION III.—THE WORKMEN'S COMPENSATION ACTS, 1906–1924.

The Workmen's Compensation Act, 1897, created a new kind of liability by making a master liable to pay compensation at a fixed rate to his servant if he was incapacitated by accident happening to him in the course of his employment, and to those dependent on the servant if he was killed by such accident.

The Act of 1897 was somewhat limited in its application. It was extended by the Act of 1900; and in 1906 both those Acts were repealed and the 1906 Act was substituted for them. The 1906 Act was again extended by the Workmen's Compensation Act, 1923, while preserving its main principles.

Compensation not due to a tort.

It must be kept in mind that *liability to pay compensation arises independently of any neglect or wrongful act* on the part of the master or his servants. And, strictly speaking, its consideration does not belong to the law of torts at all. The liability to pay compensation is not one arising out of tort, but is an incident attached by statute to the relation of master and servant. Moreover, the amount payable is fixed by a scale, and depends not on the amount of suffering caused to the workman, or on the expenses caused by his illness, but on the difference between his wages-earning capacity before and after the accident. But the subject is so closely connected with that of the Employers' Liability Act that it is convenient here to give a slight sketch of the main principles of the Act.

The reader is referred to Willis' Workmen's Compensation Acts, 1906 1924 (Butterworth & Co.), and also to Butterworth's Workmen's Compensation Cases.

ART. 94.—*Liability to Pay Compensation.*

(1) To entitle a workman to compensation he must show *either*—

(A) (i) That he has suffered personal injury by accident, and

Art. 94.

(ii) That the "injury by accident" *arose out of his employment* (*cc*), and

(iii) That the "injury by accident" *arose in the course of his employment*, and

(iv) That the injury has disabled him for more than three days from earning full wages at the work at which he was employed (*d*), *or*

(B) That by reason of his suffering from an "industrial disease," due to the nature of his employment, he has been disabled for at least one week from earning full wages at the work at which he was employed. This includes the consequences of an operation necessitated by an industrial disease (*e*).

(2) Where the injury by accident or industrial disease results in death the workman's dependants are entitled to compensation (*f*). "Dependants" means members of the family who were, in fact, wholly or in part dependent on his earnings (*g*).

Comment.

It must be observed that in this connection the words "*injury*" and "*accident*" are used in a popular sense.

Injury by accident.

"Injury" does not mean "injuria," *i.e.*, an actionable wrong, but physiological injury, such as a broken limb, rupture, wound, or other hurt however caused.

Accident.

"Accident" does not mean "inevitable accident." There is an "injury by accident" if a workman is hurt, whether it be by inevitable accident for which no one is to blame, or be the result of the negligence of a fellow-workman, or of the employer, or of the workman who is injured.

(*cc*) *Upton* v. *Great Central Ry.*, [1924] A. C. 302.
(*d*) Workmen's Compensation Act, 1906, s. 1.
(*e*) *Ibid.*, s. 8; *Russell* v. *Corser*, [1921] W. N. 5.
(*f*) *Ibid.*, s. 1, Sched. I. (*g*) *Ibid.*, s. 13.

Art. 94.

" Accident " is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed (*h*). And the fact that a man, by reason of his physical debility, is more likely to suffer an accident does not affect the question whether what befell him is to be regarded as an accident or not. Thus, when a workman in a very weak and emaciated condition while working in the stokehole of a ship received a heat stroke from the effect of which he died, it was held to be a death by accident (*i*). But accident does not include injury by disease alone not accompanied by any accident.

"Arising out of."

The words " arising out of " indicate the origin or cause of the accident which must be dependent on and connected with the employment, that is due to some cause or risk incidental to the employment. So where a sailor disappeared while on watch, his death was held to be due to an accident arising out of his employment (*j*). Where a cashier, whose duty it was to take large sums of money by train to a colliery, was *murdered* whilst so employed, it was held that the accident arose out of his employment inasmuch as his duty exposed him to this special risk which was consequently incidental to his employment (*k*). Where a workman was injured by lightning it was held to be an accident arising out of his employment, owing to the place and circumstances in which he was employed involving a greater than ordinary risk of injury by lightning (*l*). So where a teamster in the course of his employment was bitten by one of the stable cats, the accident was held to have arisen out of his employment (*m*). But where a workman was injured in the course of his employment by the tortious act of a fellow-workman **which had no relation to the employment**, the accident was held not to have arisen out of the employment (*n*).

Murder.

(*h*) *Per* Lord MACNAGHTEN, *Fenton* v. *Thorley*, [1903] A. C. 443.

(*i*) *Ismay, Imrie & Co.* v. *Williamson*, [1908] A. C. 437.

(*j*) *Owners of S.S. Swansea Vale* v. *Rice*, 27 T. L. R. 440.

(*k*) *Nisbet* v. *Rayne and Burn*, [1910] 2 K. B. 689 [C. A.]; approved in *Trim Joint District School Board* v. *Kelly*, [1914] A. C. 667.

(*l*) *Andrew v. Failsworth Industrial Society*, [1904] 2 K. B. 32 [C. A.].

(*m*) *Rowland* v. *Wright*, 24 T. L. R. 852 [C. A.].

(*n*) *Fitzgerald* v. *Clarke & Son*, [1908] 2 K. B. 796 [C. A.].

Art. 94.

"In the course of."

"A man may be within the course of his employment not merely while he is actually doing the work set before him, but also while he is where he would not be but for his employment, and is doing what a man so employed might do without impropriety" (*o*). So the Act applies where the accident arises on the employers' premises, but at a time when the actual employment has not commenced or after it has terminated (*p*), or during some temporary cessation of work; but does not apply when the accident occurs whilst the workman is going to, or returning from, his work.

Serious and wilful misconduct.

The fact that the accident was due to the negligence, or even to the misconduct, of the workman is no answer to his claim for compensation. If, however, the accident only results in **temporary disablement,** and was attributable to **serious and wilful misconduct,** he is not entitled to compensation (*q*). It has been held that mere disobedience to rules is not necessarily serious and wilful misconduct, even though it renders the workman liable to prosecution, and though it was such as would entitle the master to dismiss the workman without notice (*r*); and by the Act of 1923 compensation may be awarded in respect of injuries consequent on a workman's disobedience or assumption of unauthorised powers, provided he was acting in connection with the trade or business of his employers.

To whom the Act applies.

All persons who work under a contract of service or apprenticeship are "workmen" entitled to the benefit of the Act, except:

(a) persons **not engaged in manual labour** (such as clerks) *and* **earning more than £350** a year (*s*);

(b) persons whose **employment is casual** and are *not* employed in the employer's business, *e.g.*, a domestic charwoman not having a regular engagement (*t*);

(*o*) *Per* Lord LOREBURN, L.C., *Low* or *Jackson* v. *General Steam Fishing Co.*, [1909] A. C. 523, at p. 532.

(*p*) *Gane* v. *Norton Hill Colliery Co.*, [1909] 2 K. B. 539 [C. A.].

(*q*) Workmen's Compensation Act, 1906, s. 1 (2) (c).

(*r*) *Johnson* v. *Marshall, Sons & Co.*, [1906] A. C. 409.

(*s*) *Reid* v. *British and Irish Steam Packet Co., Limited*, [1921] W. N. 61.

(*t*) But see p. 216, s. 9 of the 1923 Act.

Art. 94.

(c) members of the employer's family dwelling in his house ;

(d) out-workers ;

(e) members of a police force ;

(f) persons in the naval or military service of the crown (*u*).

By the provisions of s. 9 of the Act of 1923 the definition of a workman is extended :

(1) to bailees of vehicles or vessels which are bailed for plying for hire (unless the contract of bailment is one of hire purchase), and the bailor is to be deemed to be the bailee's employer ;

(2) to casual labourers and persons employed for purposes of any game or recreation when engaged and paid through the management of a club ;

(3) to certain persons employed on ships.

Scale of compensation.

The scale of compensation and the mode of working it out is set out in detail in Schedule I. to the Act, and has been the subject of a good many decisions. The amount to which the workman is, or, in case of death, his dependants are, entitled, depends primarily on his wages. In the case of total or partial incapacity he gets a weekly sum, so long as the incapacity lasts. The Act of 1923 raises the minimum compensation payable to relatives, gives additional allowances to dependants, increases the maximum amount payable as a weekly payment in cases of disablement and makes additions to the compensation payable to the workman. In the case of death his dependants get a lump sum in no case exceeding £600.

Procedure.

No action lies for compensation. If the right to compensation or the amount of compensation is disputed the matter is decided in the first instance by an arbitrator, who may be, and generally is, a county court judge. From him there is an appeal direct to the Court of Appeal. And a writ of prohibition will not lie against a county court judge sitting as arbitrator under the Act (*v*).

(*u*) Workmen's Compensation Act, 1906, ss. 9, 13.

(*v*) *Turner* v. *Kingsbury Collieries, Limited*, [1921] W. N. 184.

Art. 94.

Time limit.

The time within which proceedings must now be taken is as follows :

(1) Notice, oral or written, must be given "as soon as practicable."

(2) The claim for compensation must be made within six months of the occurrence of the accident, or, in case of death, within six months from the time of death.

The Public Authorities Protection Act does *not* apply to Workmen's Compensation (*w*).

Alternative remedies.

When the injury is such that there is a cause of action against the employer at common law or under the Employers' Liability Act, the workman must elect whether he will proceed for compensation *or* bring an action. The employer cannot be compelled to pay both damages and compensation (*x*).

(*w*) *Fry* v. *Cheltenham Corporation* (1911), 81 L. J. K. B. 41 [C. A.]; *Tuckwood* v. *Rotherham Corporation*, [1921] 1 K. B. 526 [C. A.].

(*x*) Workmen's Compensation Act, 1906, s. 1 (2) (b).

CHAPTER X.

OF PRIVATE INJURY FROM PUBLIC NUISANCES.

Meaning of "public nuisance" and "private nuisance."

THE term "nuisance" is used to include two distinct causes of action. A **public nuisance** is an infringement of a public right and an injury to the public, for which the proper remedy is either criminal proceedings or an information by the Attorney-General on the part of the public, asking for an injunction to restrain the continuance of the public nuisance. It is only when there is some **special injury to an individual** that it is the subject of an action for damages.

A *private nuisance*, on the other hand, is some injury to the property of an individual. It is not an injury to the public.

In some cases, however, the line between public and private nuisance is rather fine. Thus, such an act as carrying on a noisy trade, or emitting foul gases, though usually only a private nuisance, may amount to a public nuisance if, by reason of the injury done to the neighbourhood, it interferes with the comfort and enjoyment of the public generally, or at least of all who come within range of it (*a*).

ART. 95.—*Description of Public Nuisances.*

(1) A public nuisance is some unlawful act, or omission to discharge some legal duty, which act or omission endangers the lives, safety, health, or comfort of the public, or by which the public are obstructed in the exercise of some common right.

(*a*) See *Soltau* v. *De Held*, 2 Sim. (N.S.) 133.

Art. 95.

(2) No action can be brought for a public nuisance by a private person unless he has suffered some substantial particular damage beyond that suffered by the public generally.

Kinds of public nuisances.

Public nuisances consist not only of those acts or omissions which interfere with definite public rights, such as the right of the public to use a highway, but also of nuisances which endanger the health, safety, or comfort of the public generally.

So, where a sanitary authority so manage their sewers as to affect the health or comfort of the public or the inhabitants of a large district, they commit a public nuisance in respect of which the Attorney-General is the proper party to take proceedings (*b*). As also does a person who allows rubbish or filth to be deposited on his land so as to be injurious to the inhabitants of the neighbourhood (*c*).

Nuisances to highways.

Nuisances to highways consist in any obstruction of the highway, or anything which renders the use of the highway unsafe or incommodious for the public, as physically stopping it up, or making excavations on, or immediately adjoining, it, or maintaining ruinous fences or buildings immediately adjoining it.

Examples. Excavations.

(1) Thus, where a man makes an excavation adjoining a highway, and keeps it unfenced, he commits a public nuisance and is liable for any injury occasioned to a person falling into it (*d*).

(2) So, also, traders who keep vans in a street for an unreasonable time for the purpose of loading and unloading, cause an unreasonable obstruction which may amount to a public nuisance (*e*).

Ruinous premises adjoining a highway.

(3) To permit premises *adjoining a highway* to fall into a ruinous condition is a public nuisance entitling a person

(*b*) See *Att.-Gen.* v. *Luton Local Board*, 2 Jur. (N.S.) 180 ; *Att.-Gen.* v. *Birmingham Town Council*, 6 W. R. 811 ; *Att.-Gen.* v. *Tod Heatley*, [1897] 1 Ch. 560 [C. A.].

(*c*) *Att.-Gen.* v. *Tod Heatley*, [1897] 1 Ch. 560 [C. A.].

(*d*) *Barnes* v. *Ward*, 9 C. B. 392.

(*e*) *Att.-Gen.* v. *Brighton and Hove Co-operative Supply Association*, [1900] 1 Ch. 276 [C. A.].

injured thereby to damages, and it is unnecessary for plaintiff to prove defendant's knowledge of its condition (*ee*). Thus, where the defendant had a heavy lamp projecting over the highway, which by reason of want of repair fell on the plaintiff and injured her, it was held that the defendant was liable (*f*). But if the injury is sustained by an invitee who is not on the highway but on the defendant's premises at the time he is injured, the defendant is only liable if he knew or ought to have known of the defective condition which gave rise to the injury (*g*); and where the defendants are *not occupiers* they owe no duty to anyone coming on to the premises (*gg*). Art. 95.

(4) So also, a person who maintained a low spiked wall immediately adjoining a highway was held liable for injuries caused to a little girl who stumbled against the spikes whilst using the highway (*h*). And, similarly, where a boy attempted wrongfully to climb a rotten fence adjoining a highway, and the fence fell upon and injured him, he was held to be entitled to recover, because the fence was a nuisance, and he only did what might have been expected of a boy (*i*). Dangerous fences.

(5) An excavation on land not so near to a highway as to be dangerous to persons lawfully using the highway is not a nuisance, and a trespasser has no right of action if he falls into it (*j*). Excavations not adjacent to roads.

(6) A public nuisance may be authorised by statute (*k*), but the right to do what amounts to a public nuisance cannot be acquired by prescription or long user, or justified on the ground that it is in some respects a convenience to the public (*l*). So the mere fact that a nuisance to a highway has existed for a long time is no defence. In order to justify, it must be shown to have existed at the time when Justification of nuisances.

(*ee*) *Mullan* v. *Forrester*, [1921] 2 I. R. 412.
(*f*) *Tarry* v. *Ashton*, 1 Q. B. D. 314.
(*g*) *Pritchard* v. *Peto*, [1917] 2 K. B. 173.
(*gg*) *Bromley* v. *Mercer*, [1922] 2 K. B. 129 [C. A.].
(*h*) *Fenna* v. *Clare*, [1895] 1 Q. B. 199.
(*i*) *Harrold* v. *Watney*, [1898] 2 Q. B. 320 [C. A.].
(*j*) See *Hounsell* v. *Smyth*, 7 C. B. [N.S.] 731.
(*k*) *R.* v. *Pease*, 4 B. & Ad. 30, *ante*, Art. 10.
(*l*) *R.* v. *Train*, 2 B. & S. 640; *R.* v. *Ward*, 4 A. & E. 384.

Art. 95.

the highway was dedicated to the public, so that it may be inferred that the highway was dedicated subject thereto. Thus, a highway may be dedicated subject to the right to plough it up at intervals (*m*), or to hold markets or fairs on it (*n*), or to the right of an adjoining owner to maintain in the footway a cellar flap or grating (*o*). But after the public have acquired the highway, no right to do these things can be gained except by statute.

ART. 96.—*Public Nuisance only Actionable in respect of Particular Damage.*

To enable a private person to bring an action for damages in respect of a public nuisance, he must prove either—

(a) That he has suffered some substantial damage peculiar to himself in his person or trade or calling, and different in kind from the damage suffered by the public; or

(b) That the public nuisance is also an interference with some private right or property of his.

Comment.

The damage to fall within the first part of this rule must be different in kind, and not merely in degree, from that suffered by the public generally. Thus obstructing a highway is a public nuisance. A person who is merely prevented from using the highway suffers only the same damage as any other member of the public (*p*). But a person who in using the highway suffers *personal injuries* by reason of the obstruction, suffers damage peculiar to himself, and in respect thereof has a right of action (*q*).

(*m*) *Arnold* v. *Blaker*, L. R. 6 Q. B. 433 [Ex. Ch.].

(*n*) *Elwood* v. *Bullock*, 6 Q. B. 383; *Att.-Gen.* v. *Horner*, 11 App. Cas. 66.

(*o*) *Fisher* v. *Prowse*, 2 B. & S. 770; *Robbins* v. *Jones*, 15 C. B. (N.S.) 221.

(*p*) *Winterbottom* v. *Lord Derby*, L. R. 2 Ex. 316.

(*q*) *Barnes* v. *Ward*, 9 C. B. 392.

So, too, has a person whose business is interfered with by reason of customers being deterred from getting to his shop (*r*), or by reason of his business premises being rendered dark or less commodious (*s*). Art. 96.

Again, an obstruction to a highway may also be an interference with some private right or some property of the plaintiff, so that in that way also he suffers damage of a kind peculiar to himself. The right of access to a highway from adjoining property is a private right quite distinct from the public right of using the highway, and accordingly an obstruction which cuts off access to a highway is actionable as causing particular damage (*t*).

Any person may abate a public nuisance by which he is obstructed in the exercise of a public right by removing the obstruction so far as is reasonably necessary to enable him to exercise the right interfered with; but he cannot do more than this. So, if there is an obstruction in a highway, a person using the highway may *only interfere with it as far as is necessary to exercise his right of passing along the highway*, and if there is room to pass by without removing the obstruction, he has no right to interfere with it (*u*), and may be liable to the owner if he damages the property by interfering with it (*v*). Abatement.

Art. 97. *Liability of Owner or Occupier for Public Nuisances.*

(1) If a person is injured by reason of a public nuisance caused by the want of repair or condition of premises adjoining a highway, the occupier is *primâ facie* liable and not the owner

(*r*) *Fritz* v. *Hobson*, 14 Ch. D. 542; *Lyons* v. *Gulliver*, [1914] 1 Ch. 631.

(*s*) *Benjamin* v. *Storr*, L. R. 9 C. P. 400.

(*t*) *Lyon* v. *Fishmongers' Co.*, 1 App. Cas. 662.

(*u*) *Dimes* v. *Petley*, 15 Q. B. 276; *Davies* v. *Mann*, 10 M. & W. 546.

(*v*) *Hope* v. *Osborne*, [1913] 2 Ch. 349; *Mills* v. *Brooker*, [1919] 1 K. B. 555.

Art. 97.

(unless he is also the occupier) (*w*). In particular the owner is *not* liable if he lets the premises to a tenant who agrees to repair them, unless he knows of the nuisance at the time of the letting and does something which amounts to an authority to continue it (*x*).

(2) The **owner is liable** (i) if he has contracted with the tenant to repair and the nuisance is due to want of repair (*y*); (ii) if he has let the premises in a ruinous condition and the tenant has not agreed to repair (*z*).

(3) Where the premises are in the occupation of a tenant **from year to year** there is, in effect, reletting each year, and (unless the tenant has agreed to repair) the landlord is liable for damage caused by a nuisance, if since the creation of the nuisance and before the damage he might have determined the tenancy and did not, for in that case he "lets the premises in a ruinous condition" (*a*).

(4) When premises are let on a **weekly tenancy** there is not a reletting at the end of each week so as to make the landlord liable for nuisances arising since the original letting, unless he has contracted with the tenant to do repairs. For such nuisances the tenant and not the landlord is liable (*b*).

(*w*) *Nelson* v. *Liverpool Brewery Co.*, 2 C. P. D. 311. But see *Pritchard* v. *Peto*, [1917] 2 K. B. 173; *Bromley* v. *Mercer*, [1922] 2 K. B. 126 [C. A.].

(*x*) *Pretty* v. *Bickmore*, L. R. 8 C. P. 401; *Gwinnell* v. *Eamer*, L. R. 10 C. P. 658; *Harris* v. *James* (1876), 45 L. J. Q. B. 545.

(*y*) *Payne* v. *Rogers*, 2 H. Bl. 350; *Broggi* v. *Robbins* (1898), 14 T. L. R. 439.

(*z*) *Gandy* v. *Jubber*, 5 B. & S. 78; but see Pollock on Torts, 12th ed., p. 437, note (*g*).

(*a*) *Ibid.*

(*b*) *Bowen* v. *Anderson*, [1894] 1 Q. B. 164.

Art. 97.
Comment.

The principle is that the occupier is *primâ facie* liable. An owner not in occupation is only liable if he has in some way authorised the continuance of the nuisance. He may authorise the continuance of the nuisance if, knowing of its existence, he lets the premises without repairing or requiring the tenant to repair, or if he keeps control of the premises by undertaking to repair them himself (*c*).

So, too, the owner and occupier of vacant land is liable if he knows it is being so used by the public as to become a public nuisance, and does not take reasonable steps to prevent such a user, even though he may not himself have actively done anything to cause the nuisance (*d*).

In the case of a public nuisance, when once the existence of the nuisance upon his land becomes known to the occupier of the land, it is his duty to abate it or to endeavour to abate it, even though he is entirely innocent of either causing the nuisance or of allowing it to continue (*dd*).

But neither owner nor occupier is liable for a nuisance created by some third person without his knowledge and which he could not by reasonable care have prevented (*e*).

Illustrations.

(1) The defendant let premises to a tenant who covenanted to keep them in repair. Attached to the house was a coal-cellar under the footway, with an aperture covered by an iron plate, which was, at the time of the demise, out of repair and dangerous. A passer-by, in consequence, fell into the aperture, and was injured:—*Held*, that the obligation to repair being, by the lease, cast upon the tenant, the landlord was not liable for this accident. And KEATING, J., said: "In order to render the landlord liable in a case of this sort, there must be some evidence that he authorised the continuance of this coal shoot in an insecure state; for instance, that he retained the obligation to repair the premises; that might be a circumstance to show that he authorised the continuance of the nuisance. There was no such obligation here. The

(*c*) *Gandy* v. *Jubber*, *supra*.

(*d*) *Att.-Gen.* v. *Tod Heatley*, [1897] 1 Ch. 560 [C. A.].

(*dd*) *Job Edwards* v. *Birmingham Navigations*, [1924] 1 K. B., at p. 350 [C. A.], *per* BANKES, L.J.

(*e*) *Barker* v. *Herbert*, [1911] 2 K. B. 633.

Art. 97.

landlord had parted with the possession of the premises to a tenant, who had entered into a covenant to repair" (*f*).

(2) A. was injured by the giving way of a grating in a public footway, which was used for a coal shoot, and for letting light into the lower part of the premises adjoining. The premises were at the time under lease to a tenant who covenanted to repair. At the time of the demise the grating was insecure, but there was no evidence that the landlady had any knowledge of its unsafe state, and the jury found she was not to blame:—*Held*, that as the premises were demised, and there was no longer any obligation on the landlord to keep them in repair, the plaintiff had no cause of action against the landlady. It was intimated that if the landlady had, at the time of the demise, known of the defect and done nothing to remedy it, she might have been liable as well as the tenant (*g*).

Liability of landlord to tenant.

(3) The above rules only apply to nuisances (*h*). They have no application as between landlord and tenant, or landlord and the guests of a tenant. Apart from contract, a landlord is not bound to keep the demised premises in repair as regards either his tenant (*i*), or the guests of his tenant (*j*). But a landlord who retains portions of buildings the other portions of which are let to different tenants, if the portions he retains are not used by the tenants his liability to keep these portions in repair is limited to defects of which he has notice (*jj*). Where the portions retained by the landlord are used by the tenants and their guests the liability of the landlord (apart from contract and statute) is merely the duty he has towards licensees—to warn of any concealed danger of which he knows, *i.e.*, not to make a trap (*k*). As to premises let

(*f*) *Pretty* v. *Bickmore*, L. R. 8 C. P. 401, and see *Nelson* v. *Liverpool Brewery Co.*, 2 C. P. D. 311.

(*g*) *Gwinnel* v. *Eamer*, L. R. 10 C. P. 658.

(*h*) As to private nuisances, see *post*.

(*i*) *Keates* v. *Cadogan*, 20 L. J. C. P. 76.

(*j*) *Lane* v. *Cox*, [1897] 1 Q. B. 415 [C. A.].

(*jj*) *Cockburn* v. *Smith*, [1924] 2 K. B. 119 [C. A.], overruling *Hart* v. *Rogers* (1915), 32 T. L. R. 150.

(*k*) *Huggett* v. *Miers*, [1908] 2 K. B. 278; *Lucy* v. *Bawden*, [1914] 2 K. B. 318; *Fairman* v. *Perpetual Investment Building Society*, [1923] A. C. 74, overruling *Miller* v. *Hancock*.

subject to the provisions of the House and Town Planning Act, 1909, ss. 14 and 15, the implied obligation to repair is in favour of the tenant *alone*, not for the benefit of his wife (*l*) or daughter (*m*), but to a claim of the tenant himself for damage suffered from non-fulfilment of the statutory obligation to repair it is no answer that the danger was obvious (*n*).

(4) When some boys broke the railings of an area of a vacant house, so that the area was a danger to persons using the street, it was held that the owner was not liable as he did not know of the broken railings and had used reasonable care to prevent the railings becoming a nuisance. An area is not a thing a man keeps at his peril (*o*).

(*l*) *Middleton* v. *Hall* (1913), 108 L. T. 804.
(*m*) *Ryall* v. *Kidwell & Son*, [1914] 3 K. B. 135.
(*n*) *Dunster* v. *Hollis*, [1918] 2 K. B. 795.
(*o*) *Barker* v. *Herbert*, [1911] 2 K. B. 633.

CHAPTER XI.

PRIVATE NUISANCES.

SECTION I.—NUISANCES TO CORPOREAL HEREDITAMENTS.

ART. 98.—*General Liability.*

(1) A private nuisance is some unauthorised user of a man's own property causing damage to the property of another, or some unauthorised interference with the property of another, causing damage (*a*).

(2) Any private nuisance whereby sensible injury is caused to the property of another, or whereby the ordinary physical comfort of human existence in such property is materially interfered with, is actionable.

(3) Liability for nuisance is independent of negligence.

(4) No use of property which would be legal if due to a proper motive, can be a nuisance merely because it is prompted by a motive which is improper or even malicious (*b*).

Comment.

The law with regard to private nuisances mainly depends upon the maxim *sic utere tuo ut alienum non lædas*. Not that that maxim can receive a literal interpretation, for a man may do many acts which may injure others (*ex. gr.*, build a house which may shut out a fine view theretofore enjoyed by a neighbour except where a right to such view is reserved by covenant (*c*)); but such acts are necessarily

(*a*) *Stearn* v. *Prentice Brothers*, [1919] 1 K. B. 394.
(*b*) *Bradford Corporation* v. *Pickles*, [1895] A. C. 587.
(*c*) *Browne* v. *Flower*, [1911] 1 Ch. 219.

Art. 98.

incidental to the ownership of property. The acts referred to in the maxim are acts which go beyond the recognised legal rights of a proprietor.

The damage must also be substantial and actual, not contemplated (*cc*).

Lawful act done with malicious motive.

The owner of land containing underground water which percolates by undefined channels, and flows to the land of a neighbour, has the right to divert or appropriate the percolating water within his own land, so as to deprive his neighbour of it (*d*). An owner diverted underground water percolating in undefined channels, not to improve his own land, but maliciously in order to injure his neighbours by depriving them of their water supply and to compel them to buy him out. This unneighbourly conduct, however, was held to be lawful, because it was an act rightful in itself, and therefore not wrongful when done maliciously (*e*).

Illustrations. Fumes.

(1) In the leading case of *Tipping* v. *St. Helen's Smelting Co.* (*f*), the fact that the fumes from the company's works killed the plaintiff's shrubs was held sufficient to support the action; for the killing of the shrubs was an injury to the property.

Noisy and noisome trades.

(2) So, too, it was said, in *Crump* v. *Lambert* (*g*), that smoke, unaccompanied with noise or with noxious vapour, noise alone, and offensive vapours alone, although not injurious to health, may severally constitute a nuisance; and that the material question in all such cases is, whether the annoyance produced is such as materially to interfere with the ordinary comfort of human existence in the plaintiff's property (*h*).

Interference with enjoyment of property.

(3) Where the alleged nuisance consists of acts which interfere with the reasonable enjoyment of property, the inconvenience must be substantial. The standard is referred to in *Bland* v. *Yates* as "a serious inconvenience and interference with the comfort of the occupiers of the

(*cc*) *Salvin* v. *North Brancepeth Coal Co.* (1874), 9 Ch. 705 [C. A.].
(*d*) *Chasemore* v. *Richards*, 7 H. L. Cas. 349.
(*e*) *Bradford Corporation* v. *Pickles*, [1895] A. C. 587.
(*f*) L. R. 1 Ch. 66; *Wood* v. *Conway Corporation*, [1914] 2 Ch. 47.
(*g*) L. R. 3 Eq. 409.
(*h*) *Bland* v. *Yates*, 58 Sol. Jo. 612.

dwelling-house according to notions prevalent among reasonable English men and women." Art. 98.

(4) The collection of a crowd of noisy and disorderly people outside grounds in which entertainments with music and fireworks are being given for profit may constitute a nuisance, even though the entertainer has excluded all improper characters, and the amusements have been conducted in an orderly way (*i*). Noisy entertainments.

So, too, may the collection of large and noisy crowds outside a club kept open till 3 A.M. for pugilistic encounters (*j*).

(5) So, too, the turning of the ground floor of a London house into a stable, so that the neighbours are disturbed all night by the noises of the horses, may constitute a nuisance (*k*).

(6) Other examples of nuisances to corporeal hereditaments are, permitting buildings to become ruinous so as to fall on one's neighbour's land (*l*); overhanging eaves from which the water flows on to another's property (*m*); or overhanging trees (*n*); or pigsties creating a stench, erected near to another's house. And it would seem that noisy dogs, preventing the plaintiff's family from sleeping, are a nuisance if serious discomfort is caused (*o*). So, also, is a small-pox hospital so conducted as to spread infection to neighbouring houses (*p*). The ringing of bells at a Roman Catholic chapel adjoining plaintiff's premises at all hours of the day and night (*q*), and the collecting a queue so that the entrance to plaintiff's premises was interfered with, are other examples (*r*). Other examples.

(*i*) *Walker* v. *Brewster*, L. R. 5 Eq. 25. See also *Inchbald* v. *Robinson*, *Inchbald* v. *Barrington*, L. R. 4 Ch. 388.

(*j*) *Bellamy* v. *Wells*, 60 L. J. Ch. 156. And see also *Barber* v. *Penley*, [1893] 2 Ch. 447, and *Jenkins* v. *Jackson*, 40 Ch. D. 71.

(*k*) *Ball* v. *Ray*, L. R. 8 Ch. 467.

(*l*) *Todd* v. *Flight*, 9 C. B. (N.S.) 377.

(*m*) *Bathishill* v. *Reed*, 25 L. J. C. P. 290.

(*n*) *Lemmon* v. *Webb*, [1895] A. C. 1; *Smith* v. *Giddy*, [1904] 2 K. B. 448.

(*o*) *Street* v. *Tugwell*, Selwyn's Nisi Prius, 13th ed., 1070.

(*p*) *Metropolitan Asylum District* v. *Hill*, 6 App. Cas. 193.

(*q*) *Soltau* v. *de Held* (1851), 21 L. J. Ch. 153.

(*r*) *Lyons* v. *Gulliver*, [1914] 1 Ch. 631.

Art. 98.

Building operations.

Further, building operations involving pile driving may constitute a nuisance by preventing sleep where conducted at night, or may constitute a nuisance where it endangers the stability of buildings themselves not unduly weak in shock resistance (*rr*).

ART. 99.—*Reasonableness of Place.*

(1) That which is *primâ facie* a nuisance cannot be justified by the fact that it is done in a proper and convenient place and is a reasonable use of the defendant's land (*s*).

(2) Where the acts complained of are nuisances by reason of injury to property, it is no defence that the locality is one devoted to trades which cause such injury (*t*).

(3) But with regard to acts which are nuisances by reason of their interfering with the enjoyment of property, as distinguished from those which damage the property itself, the circumstances of the locality must be taken into consideration (*u*).

Comment.

(1) The spot selected may be very convenient for the defendant, or for the public at large, but very inconvenient to a particular individual who chances to occupy the adjoining land; and proof of the benefit to the public, from the exercise of a particular trade in a particular locality, can be no ground for depriving an individual of his right to compensation in respect of the particular injury he has sustained from it. Thus, where the defendant used

(*rr*) *De Keyser* v. *Spicer* (1914), 30 T. L. R. 257; *Hoare* v. *McAlpine*, [1923] 1 Ch. 167.

(*s*) *Bamford* v. *Turnley*, 31 L. J. Q. B. 286 [Ex. Ch.].

(*t*) *St. Helen's Smelting Co.* v. *Tipping*, 11 H. L. Cas. 642; *Salvin* v. *North Brancepeth Coal Co.*, *supra*; *Wood* v. *Conway Corporation*, [1914] 2 Ch. 47.

(*u*) *Ibid.* and *Polsue and Alfieri, Limited* v. *Rushmer*, [1907] A. C. 121; *Bland* v. *Yates*, 58 Sol. Jo. 612; *De Keyser's Hotel, Limited* v. *Spicer* (1914), 30 T. L. R. 257; *Hoare* v. *McAlpine*, *supra*.

Art. 99.

his land for burning bricks and so caused substantial annoyance to his neighbour, it was held that it was no defence that it was done in a proper and convenient spot, and was a reasonable use of the land (*uu*). At the same time a person is entitled to use his land or house in the ordinary way in which property of the like character is used, and an adjacent owner must put up with such noises and inconveniences as may reasonably be expected from his neighbours, such as the noise of a pianoforte, or the noise of children in their nursery, which are noises we must reasonably expect, and must, to a large extent, put up with (*v*).

(2) In *St. Helen's Smelting Co.* v. *Tipping* (*w*), Lord WESTBURY said : " In matters of this description, it appears to me that it is a very desirable thing to mark the difference between an action brought for a nuisance upon the ground that the alleged nuisance produces **material injury to the property,** and an action brought for a nuisance on the ground that the thing alleged to be a nuisance is productive of **sensible personal discomfort.** With regard to the latter—namely, the personal inconvenience and interference with one's enjoyment, one's quiet, one's personal freedom, anything that discomposes or injuriously affects the senses or the nerves—whether that may or may not be denominated a nuisance, must undoubtedly depend greatly on the circumstances of the place where the thing complained of actually occurs. If a man lives in a town, it is necessary that he should subject himself to the consequences of those operations of trade which may be carried on in the immediate locality, which are actually necessary for trade and commerce, and also for the enjoyment of property, and for the benefit of the inhabitants of the town, and the public at large. If a man lives in a street where there are numerous shops, and a shop is opened next door to him which is carried on in a fair and reasonable way, he has no ground of complaint because, to himself individually, there may arise much discomfort from the trade

(*uu*) *Bamford* v. *Turnley*, 31 L. J. Q. B. 286 [Ex. Ch.].

(*v*) See *Ball* v. *Ray*, L. R. 8 Ch. 467 ; *Att.-Gen.* v. *Cole*, [1901] 1 Ch. 205 ; *Reinhardt* v. *Mentasti*, 42 Ch. D. 685.

(*w*) 11 H. L. Cas. 650.

Art. 99.

carried on in that shop. But when an occupation is carried on by one person in the neighbourhood of another, and the result of that trade or occupation or business is a material injury *to property*, then unquestionably arises a very different consideration. I think that in a case of that description, the submission which is required from persons living in society to that amount of discomfort which may be necessary for the legitimate and free exercise of the trade of their neighbours, would not apply to circumstances the immediate result of which is sensible injury to the value of the property."

(3) In 1905 (*x*), WARRINGTON, J., said that for the purpose of coming to a decision whether working a noisy printing machine by night in Gough Square (a neighbourhood devoted to the printing trade) was a nuisance to a residence adjoining the square, he was to look not at the defendants' operations in the abstract and by themselves, but in connection with all the circumstances of the locality, and in particular with regard to the trades usually carried on there, and the noises and disturbance existing prior to the commencement of the defendants' operations; but that if, after taking these circumstances into consideration, he found a serious and not merely a slight interference with the plaintiff's comfort, he thought it his duty to interfere. And acting on this principle, he granted an injunction restraining the defendants from using their machine, although the machine was one of an improved type, quieter than those generally used, and was properly used. It was enough that in fact it created a nuisance. His decision was affirmed in the House of Lords.

ART. 100.—*Plaintiff coming to the Nuisance.*

It is no answer to an action for nuisance, that the plaintiff knew that there was a nuisance, and yet went and lived near it (*y*).

(*x*) *Rushmer* v. *Polsue and Alfieri, Limited*, 21 T. L. R. 183, affirmed in House of Lords, [1907] A. C. 121; more recently the same judge has decided on the same principles *Bland* v. *Yates* (1914), 58 Sol. Jo. 612; *De Keyser's Hotels, Limited* v. *Spicer Brothers* (1914), 30 T. L. R. 257.

(*y*) *St. Helen's Smelting Co.* v. *Tipping, supra.*

Art. 100.

Or in the words of BYLES, J., in *Hole* v. *Barlow* (*z*): "It used to be thought that if a man knew that there was a nuisance and went and lived near it, he could not recover, because it was said it is he that goes to the nuisance, and not the nuisance to him. That, however, is not law now." The justice of the present law is obvious from the consideration, that if it were otherwise, a man might be wholly prevented from building upon his land if a nuisance was set up in its locality, because the nuisance might be harmless to a mere field, and therefore not actionable, and yet unendurable to the inhabitants of a dwelling-house.

Illustration.

So where a confectioner had for many years used a pestle and mortar in his kitchen in Wigmore Street, and then the plaintiff, a physician in Wimpole Street, built a consulting room in his back garden against the confectioner's kitchen, and the noise from the pestle and mortar was a nuisance to the consulting room, it was held that, although the plaintiff had come to the nuisance, he was nevertheless entitled to complain of it as a nuisance. But the right to commit a nuisance may be acquired by having committed the nuisance complained of for upwards of twenty years;-not merely the cause but the nuisance must have been committed for that period (*a*).

ART. 101.—*Liability of Occupier and Owner for Private Nuisances.*

(1) The occupier of premises upon which a nuisance is created to adjoining property is *primâ facie* liable. There is no liability upon an owner as such (*b*).

(2) An owner who is not in occupation may be liable if he has originally created the nuisance and let the premises with the nuisance

(*z*) 27 L. J. C. P. 207, at p. 208.

(*a*) *Sturges* v. *Bridgman*, 11 Ch. D. 852 [C. A.]; and see *Crossley & Sons, Limited* v. *Lightowler*, L. R. 2 Ch. 478. As to the effect of an established business being declared by subsequent statute to have been an "offensive trade," see *Mayo* v. *Stazicker*, [1921] 2 K. B. 196.

(*b*) *Russell* v. *Shenton* (1842), 3 Q. B. 449.

Art. 101.

complained of, or, when the nuisance is due to want of repair, has permitted the premises to get out of repair, and lets them with knowledge of the want of repair, if, as between himself and his tenant, he has undertaken the repairs (*c*).

(3) Where the nuisance is caused, not by the state of the premises themselves, but by their user, an owner who is not in occupation is not liable for the nuisance, although he has let the premises in such a condition that they are capable of being so used as to cause a nuisance (*d*).

(4) Where the occupier of land on which the *private* nuisance exists is entirely innocent of either creating or continuing it, he is under no duty to abate it (*dd*).

Comment.

(1) Generally the person who causes or authorises the nuisance is liable, so a person who creates a nuisance on his land and then lets it with the nuisance, is liable if the nuisance is continued (*e*). And the purchaser or lessee also may be liable for continuing the nuisance (*f*).

So, too, an owner of land who lets a house and undertakes, as between himself and his tenant, to repair, is liable if, by reason of his not repairing, a nuisance is caused to adjoining premises (*g*). But an owner who is not occupier is not liable unless he can be fixed with liability in one of these ways (*h*).

Nuisances caused by user of land.

(2) If a person builds a factory with a chimney on his land, and lets the land, he does not thereby authorise the user of the chimney so as to be a nuisance. It is not the existence of the chimney which is a nuisance, but its

(*c*) *Rosewell* v. *Prior*, 2 Salk. 460; *Todd* v. *Flight*, 9 C. B. (N.S.) 377.

(*d*) *Rich* v. *Basterfield*, 4 C. B. 783.

(*dd*) *Job Edwards* v. *Birmingham Navigations*, *supra*.

(*e*) *Rosewell* v. *Prior*, 2 Salk. 460.

(*f*) *Penruddock's Case*, 5 Co. Rep. 100 b.

(*g*) *Todd* v. *Flight*, 9 C. B. (N.S.) 377.

(*h*) *Russell* v. *Shenton*, 3 Q. B. 449.

use, and for this the person who uses the chimney, not the owner of the land, is liable (*i*). So, also, if a third person against my will puts something on my land which is a nuisance to my neighbour, I am not liable, for I have not caused the nuisance (*j*). Art. 101.

ART. 102.—*Prescription to Commit a Nuisance.*

The right to commit a private nuisance may be acquired by grant or prescription.

NOTE.—An owner of land may by express grant give to another a right to do that which would otherwise be a nuisance, *e.g.*, to discharge foul water on to his land. If a person has been actually committing a nuisance for a great many years without objection, it is reasonable to presume that he has in some way acquired a right to do so, and at common law juries were directed to **presume a lost grant** in such cases. But juries were not bound to, and in some cases refused to, presume a lost grant which they did not believe ever existed in fact (*k*).

The right of one owner of land to commit nuisances of this kind in respect of the land of another is a right in the nature of an easement, being not a mere personal right, but a right granted, or presumed to have been granted, by the owner of land or his predecessors in title (so as to bind all subsequent owners), to the owner of the land for whose benefit it is created for the benefit of him and all subsequent owners.

Now, by the Prescription Act, 1832, it is seldom necessary to presume a lost grant, for where an easement which might at common law be claimed by lost grant has been actually enjoyed by a person claiming it as a right without interruption for **twenty years immediately before action** Prescription Act.

(*i*) *Rich* v. *Basterfield, supra.*

(*j*) *Saxby* v. *Manchester and Sheffield Rail. Co.*, L. R. 4 C. P. 198.

(*k*) The law as it stood before the Prescription Act "put an intolerable strain on the consciences of judges and jurymen" (*per* Lord MACNAGHTEN in *Gardner* v. *Hodgson's Kingston Brewery Co.*, [1903] A. C. 229, at p. 236).

Art. 102. brought, that is generally enough to establish the right, unless it has been enjoyed by consent or agreement (*l*).

Illustrations. (1) Accordingly, now a person may by twenty years' user gain a right to pour foul water into another's stream (*m*).

(2) It must be noted that the period of twenty years only begins to run from the time when the acts complained of begin to be a nuisance. So when the defendant had for more than twenty years made a noise which did not amount to an actionable nuisance to his neighbour, because the neighbour's land was not built on, he acquired no easement by so doing; and accordingly when the plaintiff built a consultation room on the land affected by the noise, and the noise then began to be a nuisance, it was held that the defendant had not acquired a right under the Prescription Act (*n*).

(3) A person can only acquire by prescription a right to do acts of the same kind and amount as he has used for the period of enjoyment. So if he has for twenty years poured a certain amount of filth of a particular kind into a stream, he can only prescribe to discharge filth of that amount and of that kind, and is not justified in pouring in any larger amount, or filth of a different kind (*o*).

ART. 103.—*Remedy of Reversioners for Nuisances.*

Whenever any wrongful act is necessarily injurious to the reversion to land, or has actually been injurious to the reversionary interest, the reversioner may sue the wrongdoer (*p*).

(*l*) 2 & 3 Will. 4, c. 71. The period is in some cases forty years, as when the land of the servient tenement (that is the land whose owner is supposed to have made the grant) has been owned by some person who could not lawfully make a grant to bind his successors in title, such as a tenant for life. If there has been forty years' enjoyment the right can only be defeated by showing that it was enjoyed under an express grant or consent in writing. No grant can now be presumed from enjoyment for a less period than twenty years.

(*m*) *Wright* v. *Williams*, 1 M. & W. 77; and see *Gardner* v. *Hodgson's Kingston Brewery Co.*, [1903] A. C. 229.

(*n*) *Sturges* v. *Bridgman*, 11 Ch. D. 852 [C. A.].

(*o*) *Crossley & Sons, Limited* v. *Lightowler*, L. R. 2 Ch. 478.

(*p*) *Bedingfield* v. *Onslow*, 3 Lev. 209.

Art. 103.
Illustrations.

(1) Any **permanent** obstruction of an incorporeal right, as of way, air, light, water, etc., may be an injury to the reversion (*q*).

(2) But an action will not lie for a nuisance of a mere transient and temporary character (*r*). Thus, a nuisance arising from noise or smoke will not support an action by the reversioner (*s*). Some injury to the reversion must always be proved, for the law will not assume it (*t*).

ART. 104.—*Remedy by Abatement.*

(1) A person injured by a nuisance may abate it, that is remove that which causes the nuisance, provided that he commits no riot in the doing of it, nor occasions any damage beyond what the removal of the inconvenience necessarily requires (*u*).

(2) Where there are alternative ways of abating a nuisance the less mischievous must be chosen (*v*).

(3) A person cannot justify doing a wrong to an innocent third party or to the public in abating a nuisance. So it seems that entry on the lands of an innocent third party cannot be justified (*w*).

(4) In order to abate a nuisance an entry may be made on the lands on which the cause of the nuisance is, provided notice requesting removal of the nuisance be first given. But if a nuisance

(*q*) *Kidgill* v. *Moor*, 9 C. B. 364; *Metropolitan Association* v. *Petch*, 27 L. J. C. P. 330; *Greenslade* v. *Halliday*, 6 Bing. 379.

(*r*) *Baxter* v. *Taylor*, 4 B. & Ad. 72.

(*s*) *Mumford* v. *Oxford, Worcester and Wolverhampton Rail. Co.*, 25 L. J. Ex. 265; *Simpson* v. *Savage*, 26 L. J. C. P. 50; *White* v. *L. G. O. Co.*, [1914] W. N. 78; 58 Sol. Jo. 339.

(*t*) *Kidgill* v. *Moor*, 9 C. B. 364.

(*u*) Stephen's Commentaries, 16th ed., Vol. III., p. 443; *Job Edwards* v. *Birmingham Navigations*, *supra*. It is generally very imprudent to attempt to abate a nuisance. It is far better to apply for an injunction.

(*v*) *Per* BLACKBURN, J., in *Roberts* v. *Rose*, L. R. 1 Ex. 82 [Ex Ch.], at p. 89.

(*w*) *Ibid.*

Art. 104. can be abated without committing a trespass no notice is required (*x*).

(5) An entry on another's land to prevent an apprehended nuisance cannot be justified.

Notice.

It must be observed that notice is generally necessary before entry on the lands of another—but it seems that notice is dispensed with in three cases, viz., (a) where the owner of the land was the original wrongdoer, by placing the nuisance there; (b) where the nuisance arises by default in performance of some duty cast on him by law; and (c) when the nuisance is immediately dangerous to life or health (*y*).

Examples.

(1) Thus, if my neighbour build a wall and obstruct my ancient lights, I may, after notice and request to him to remove it, enter and pull it down (*z*); but where the plaintiff had erected scaffolding in order to build, which building when erected would have been a nuisance, and the defendant entered and threw down the scaffolding, such entry was held wholly unjustifiable (*a*). But even after notice abatement cannot be justified in cases where an injunction would not be granted (*b*).

(2) Branches of trees overhanging a man's land may be cut to abate the nuisance without notice, provided this can be done without committing a trespass (*c*).

Pulling down inhabited house.

(3) A commoner may abate an encroachment on his common by pulling down a house or a fence obstructing his right (*d*); so also may one whose right of way is obstructed (*e*); before pulling down a house, notice and request to remove must be given *if the house is actually inhabited* (*f*).

(*x*) *Lemmon* v. *Webb*, [1895] A. C. 1.
(*y*) See *Jones* v. *Williams*, 11 M. & W. 176.
(*z*) *R.* v. *Rosewell*, 2 Salk. 459.
(*a*) *Norris* v. *Baker*, 1 Roll. Rep. 393, fol. 15.
(*b*) *Lane* v. *Capsey*, [1891] 3 Ch. 411.
(*c*) *Lemmon* v. *Webb*, [1895] A. C. 1.
(*d*) *Mason* v. *Cæsar*, 2 Mod. Rep. 65.
(*e*) *Lane* v. *Capsey*, [1891] 3 Ch. 411.
(*f*) *Davies* v. *Williams*, 16 Q. B. 556; *Lane* v. *Capsey*, [1891] 3 Ch. 411.

SECTION II.—NUISANCES TO INCORPOREAL HEREDITAMENTS.

Servitudes.

A servitude is a duty or service which is owed in respect of one piece of land, either to the owner as such of another piece of land, or to some other person. Property to which such a right is attached is called the dominant tenement, that over which the right is exercised being denominated the servient tenement.

Where the right is annexed to a dominant tenement it is said to be **appurtenant** if it arises by prescription or grant, and **appendant** if it arises by manorial custom. Where it is annexed merely to a person it is said to be a **right in gross.**

Natural servitudes.

Servitudes are either natural or conventional. Natural servitudes are such as are necessary and natural adjuncts to the properties to which they are attached (such as the right of support to land in its natural state), and they apply universally throughout the kingdom. Conventional servitudes, on the other hand, are not universal, but must always arise either by custom, prescription, or express or implied grant. The right to the enjoyment of a conventional servitude is called an *easement* or a *profit à prendre in alieno solo*, according as the right is merely a right of user, or a right to enter another's land and take something from it, as game, fish, minerals, gravel, turf, or the like.

Easements and *profit à prendre.*

The easements known to our law are numerous. Mr. Gale, in his excellent treatise on Easements, gives a list of no less than twenty-five "amongst other" instances. Any unjustifiable interference with an easement or other servitude is a tort, and torts of this kind are usually classed with nuisances. As the rights interfered with are incorporeal hereditaments, they are spoken of as nuisances to incorporeal hereditaments. Torts of this kind are as various as are the kinds of easements and other servitudes, but in an elementary work such as this, it is only possible to treat of those which most often occur in practice, namely, interferences with: (1) rights of support for land, (2) rights of support for buildings, (3) rights to the free access of light and air, (4) rights to the use of water,

and (5) rights of way. And as to these, it is only proposed to deal with the nature of the rights sufficiently to enable the student to appreciate what kind of acts amount to disturbances. The law relating to the acquisition of servitudes and their incidents belongs rather to the law of property than to that of torts.

Franchises.

Another kind of incorporeal right is a franchise, and a disturbance of that right is a nuisance. Franchises include rights of ferry and market. Other rights akin to franchises are patent rights, copyrights, and rights to trade marks: the nature and acquisition of which depend largely upon the several statutes relating thereto. The right to vote for members of Parliament is also a franchise, and an action lies for preventing a person from exercising that right (*g*).

Disturbances or interferences with *profits à prendre* (such as rights of common and fisheries) and of franchises (such as ferries and markets) (*gg*) are torts, and are properly included among nuisances to incorporeal hereditaments. But the nature of these rights and what acts amount in law to disturbances belongs rather to the law of property than to that of torts, and cannot be conveniently discussed in an elementary work on torts (*h*).

ART. 105.—*Disturbance of Right of Support for Land without Buildings.*

(1) Every person commits a tort, who so uses his own land as to deprive his neighbour of the subjacent or adjacent support of mineral matter necessary to retain such neighbour's land in its natural and unencumbered state (*hh*).

(2) A man may not pump from under his own land a bed of wet sand so as to deprive his

(*g*) *Ashby* v. *White*, 2 Lord Raym. 938; 1 Sm. L. C. 240, as explained by *Tozer* v. *Child* (1857), 26 L. J. Q. B. 157.

(*gg*) *Morpeth Corporation* v. *Northumberland Farmers Auction Mart*, [1921] 2 Ch. 154.

(*h*) The reader is referred to the standard works on Real Property, *e.g.*, Challis's Real Property (Butterworth & Co.).

(*hh*) *Backhouse* v. *Bonomi*, 9 H. L. Cas. 503; *Birmingham Corporation* v. *Allen*, 6 Ch. D. 284 [C. A.]; *Howley Park Coal and Cannel Co.* v. *London and North Western Rail. Co.*, [1913] A. C. 11.

Art. 105.

neighbour's land of support (*i*); but he may pump water from under his own land with impunity, although the result may be to deprive his neighbour's land of support (*k*).

(3) In order to maintain an action for disturbance of this right, some appreciable subsidence must be shown (*l*), or, where an injunction is claimed, some irreparable damage must be threatened (*m*).

(4) The right of support may be destroyed by covenant, grant or reservation (*n*).

Illustrations.

The right arises *ex jure naturæ*.

(1) In *Humphries* v. *Brogden* (*o*), Lord CAMPBELL said: "The right to *lateral* support from adjoining soil is not, like the support of one building from another, supposed to be gained by grant, but it is a right of property passing with the soil. If the owner of two adjoining closes conveys away one of them, the alienee, without any grant for that purpose, is entitled to the lateral support of the other close the very instant when the conveyance is executed, as much as after the expiration of twenty years or any longer period. *Pari ratione* where there are separate freeholds from the surface of the land and the mines belong to different owners, we are of opinion that the owner of the surface, *while unencumbered* by buildings *and in its natural state*, is entitled to have it supported by the subjacent mineral strata. Those strata may, of course, be removed by the owner of them, so that a sufficient support is left; but if the surface subsides and is injured by the removal of these

(*i*) *Jordeson* v. *Sutton, etc. Gas Co.*, [1899] 2 Ch. 217 [C. A.].

(*k*) *Popplewell* v. *Hodkinson*, L. R. 4 Ex. 248; but see *per* LINDLEY, M.R., in *Jordeson* v. *Sutton, etc. Gas Co.*, [1899] 2 Ch., at p. 239.

(*l*) *Smith* v. *Thackerah*, L. R. 1 C. P. 564, as explained in *Att.-Gen.* v. *Conduit Colliery Co.*, [1895] 1 Q. B. 301 [C. A.], at p. 313.

(*m*) *Birmingham Corporation* v. *Allen*, 6 Ch. D. 284 [C. A.].

(*n*) *Rowbotham* v. *Wilson*, 8 H. L. Cas. 348; *Aspden* v. *Seddon*, L. R. 10 Ch. App. 394, and cases there cited; *Davies* v. *Powell Duffryn Steam Coal Co.*, [1921] W. N. 161 [C. A.].

(*o*) 12 Q. B. 739.

Art. 105. strata, although the operation may not have been conducted negligently nor contrary to the custom of the country, the owner of the surface may maintain an action against the owner of the minerals for the damage sustained by the subsidence.

Subterranean water.

(2) But although there is no doubt that a man has no right to withdraw from his neighbour the support of adjacent soil, there would seem to be nothing at common law to prevent him draining that soil, if for any reason it becomes necessary or convenient for him to do so. It has therefore been held that he is not liable if the result of his drainage operations is to cause a subsidence of his neighbour's land (*p*). But whatever may be true of percolating waters themselves, if a man withdraws, along with that water, quicksand or water logged soil, and in consequence thereof his neighbour's land settles and cracks, he will be liable (*q*). And the same remark applies *a fortiori* to the withdrawal of pitch or other liquid mineral, and (it is submitted) to mineral oil (*r*).

Exception.

Companies governed by the Railways Clauses Consolidation Act, 1845, by virtue of the mining sections (ss. 77–85) do not acquire a right to support in respect of mines within 40 yards of a railway; but as to all the mines outside that limit the common-law right to lateral support for its railway is maintained unaffected (*s*).

(*p*) *Popplewell* v. *Hodkinson*, L. R. 4 Ex. 248; but see the observations on this case made by LINDLEY, M.R., and RIGBY, L.J., in *Jordeson* v. *Sutton, etc. Gas Co.*, [1899] 2 Ch. 217 [C. A.], at pp. 239, 243.

(*q*) The subject was discussed in *Salt Union* v. *Brunner, Mond & Co.*, [1906] 2 K. B. 822. There the defendants were held not liable for pumping brine from under their land, though the result was to remove the support of neighbouring land by dissolving the salt in the subsoil. The decision, however, turned on the special circumstances of the case, and does not support the general principle that brine may be lawfully pumped so as to remove the support of adjacent lands.

(*r*) *Jordeson* v. *Sutton, etc. Gas Co.*, [1899] 2 Ch. 217; *Trinidad Asphalt Co.* v. *Ambard*, [1899] 2 Ch. 260, and [1899] A. C. 594 [P. C.].

(*s*) *Hawley Park Coal and Cannel Co.* v. *London and North Western Rail. Co.*, [1913] A. C. 11 (H. L.).

Art. 106.

ART. 106.—*Disturbance of Support of Buildings.*

(1) A tort is *not* committed by one who so deals with his own property as to take away the support necessary to uphold his neighbour's *buildings*, unless a right to such support has been gained by grant, express or implied (*t*), or by twenty years' uninterrupted user, peaceable, open, and without deception (*u*).

(2) But the owner of land may maintain an action for disturbance of the natural right to support for the surface, notwithstanding buildings have been erected upon it, provided the weight of the buildings did not cause the injury (*x*).

Right not *ex jure naturæ*.

(1) Thus, in *Partridge* v. *Scott* (*y*), it was said that "rights of this sort, if they can be established at all, must, we think, have their origin in grant. If a man builds a house at the extremity of his land, he does not thereby acquire any easement of support or otherwise over the land of his neighbour. He has no right to load his own soil, so as to make it require the support of his neighbour's, unless he has some grant to that effect." So, again, as between adjoining houses, there is no obligation towards a neighbour, cast by law on the owner of a house, merely as such, to keep it standing and in repair; his only duty being to prevent it from being a nuisance, and from falling on to his neighbour's property (*z*).

Right acquired by twenty years' user.

(2) But a grant of a right of support for buildings is gained by uninterrupted user for twenty years, if the

(*t*) *Partridge* v. *Scott*, 3 M. & W. 220; *Brown* v. *Robins*, 4 H. & N. 186; *North Eastern Rail. Co.* v. *Elliott*, 29 L. J. Ch. 808.

(*u*) *Dalton* v. *Angus*, 6 App. Cas. 740; applied in *Cory* v. *Davies*, [1923] 2 Ch. 95.

(*x*) *Brown* v. *Robins*, 4 H. & N. 186; *Stroyan* v. *Knowles*, *Hamer* v. *Same*, 6 H. & N. 454.

(*y*) *Ubi supra.* (*z*) *Chauntler* v. *Robinson*, 4 Ex. 163.

Art. 106.

enjoyment is peaceable and without deception or concealment, and so open that it must be known that some support is being enjoyed by the plaintiff's building (*a*).

(3) The right of support for an ancient building by adjacent buildings may be acquired by prescription in the same way as may the right of support by adjacent lands (*b*).

Where natural right to support of site infringed, the consequent damage to a modern house may be recoverable.

(4) Though no right of support for a *building* has been gained, yet if the act of the defendant would have caused the site of the building to subside without the building, the defendant will be liable, not merely for the damage done to the land, but also for the injury caused to the building. For he will have committed a wrongful act (viz., an act causing the subsidence of his neighbour's land), and will consequently be liable for all damages which might reasonably have been anticipated as the consequence of that act (*c*).

ART. 107.—*Disturbance of Right to Light and Air.*

(1) There is no right, *ex jure naturæ*, to the free passage of light to a house or building, but such a right may be acquired by (a) express or implied grant from the contiguous proprietors; (b) by reservation (express or implied) on the sale of the servient tenement; or (c) by actual enjoyment of such light for the full period of twenty years without interruption submitted to or acquiesced in for one year after the owner of the dominant tenement shall have had notice thereof, and of the person making or authorising such interruption (*d*).

(*a*) *Dalton* v. *Angus*, 6 App. Cas. 740; applied in *Cory* v. *Davies*, [1923] 2 Ch. 95.

(*b*) *Lemaitre* v. *Davis*, 19 Ch. D. 281.

(*c*) *Stroyan* v. *Knowles*, *Hamer* v. *Same*, 6 H. & N. 454. For an example of a proper case for an injunction to prevent such damage, see *Consett Industrial, etc. Society, Limited* v. *Consett Iron Co., Limited*, [1922] 2 Ch. 135 [C. A.].

(*d*) 2 & 3 Will. 4, c. 71, ss. 3, 4.

Art. 107.

(2) A right to the free access of air through a particular defined channel, or through a particular aperture, may be acquired (*e*) in the same way as a right to light. But a right to the free access of air over land to land or buildings at large cannot (it seems) be acquired (*f*).

(3) Where the owner of a house has acquired a right over land to light in respect of any windows in that house, any person who builds on that land so close to those windows as to render the occupation of the house uncomfortable according to the ordinary notions of mankind, and (in the case of business premises) as to render it impossible to carry on business therein as beneficially as before, commits a tort (*g*).

Illustrations.

Implied grants of right.

(1) Implied grants of easements are generally founded on the maxim, "A man cannot derogate from his own grant." In other words, the grantor of land which is to be used for a particular purpose is under an obligation to abstain from doing anything on adjoining property belonging to him which would prevent the land granted from being used for the purpose for which the grant was made (*h*).

Right gained by prescription.

(2) To gain a right by prescription under s. 3 of the Prescription Act, 1832 (*i*), there must be user without the written consent (*k*) of the owner of the servient tenement, uninterrupted for twenty years, from the time when window

(*e*) *Bass* v. *Gregory*, 25 Q. B. D. 481; *Cable* v. *Bryant*, [1908] 1 Ch. 259.

(*f*) *Webb* v. *Bird*, 13 C. B. (N.S.) 841; *Bryant* v. *Lefever*, 4 C. P. D. 172 [C. A.]; *Chastey* v. *Ackland*, [1895] 2 Ch. 389 [C. A.]; see *S. C.* [1897] A. C. 155.

(*g*) *Colls* v. *Home and Colonial Stores, Limited*, [1904] A. C. 179.

(*h*) *Aldin* v. *Latimer Clark, Muirhead & Co.*, [1894] 2 Ch. 437.

(*i*) 2 & 3 Will. 4, c. 71.

(*k*) Verbal consent is not enough to prevent acquisition of the right (*Mallam* v. *Rose*, [1915] 2 Ch. 222).

Art. 107.

spaces are complete and the building is roofed in (*l*). As, however, by s. 4, nothing is to be deemed an interruption unless submitted to for a year after notice, it has been held that enjoyment for nineteen years and 330 days, followed by an interruption of thirty-five days just before the action was commenced, was sufficient to establish the right (*m*). However, for the purposes of commencing an action an inchoate title of nineteen years and a fraction is not sufficient, and no injunction will be granted until the twenty years have expired (*n*).

Right to access of air.

(3) Actions to prevent, or to claim damages for, interference with ancient lights, are frequently spoken of as cases of light and air, and the right relied on, as a right to the access of "light and air." Most of the cases relate solely to the interference with the access of light, and it has been said that a right to the access of air over the general unlimited surface of the land of a neighbour cannot be acquired by mere enjoyment (*o*). Thus, in *Webb* v. *Bird* (*p*), it was held that the owner of an ancient windmill could not, under the Prescription Act, prevent the owner of adjoining land from building so as to interrupt the passage of air to the mill. A similar decision was given in *Bryant* v. *Lefever* (*q*), where it was sought to restrain the defendant from building so as to obstruct the access of air to the plaintiff's chimneys. But there seems really to be no difference in principle between easements of light and of air, and a right to the uninterrupted passage of air **through a defined aperture,** such as a window used for ventilation (*r*), or a ventilating shaft (*s*), may be acquired by grant or prescription.

(*l*) *Collis* v. *Laugher*, [1894] 3 Ch. 659; and the section does not apply to doorways (*Levet* v. *Gaslight and Coke Co.*, [1919] 1 Ch. 24).

(*m*) *Flight* v. *Thomas*, 11 A. & E. 688 [Ex. Ch.].

(*n*) *Lord Battersea* v. *City of London Commissioners of Sewers*, [1895] 2 Ch. 708.

(*o*) *Per* COTTON, L.J., *Bryant* v. *Lefever*, 4 C. P. D. 172 [C. A.]. See also *Chastey* v. *Ackland*, [1895] 2 Ch. 398 [C. A.]; [1897] A. C. 155.

(*p*) 13 C. B. (N.S.) 841.

(*q*) *Supra.*

(*r*) *Cable* v. *Bryant*, [1908] 1 Ch. 259.

(*s*) *Bass* v. *Gregory*, 25 Q. B. D. 481.

Art. 107.

Degree of diminution giving rise to an action.

(4) Where a right to light has been acquired by express grant, the question whether any substantial infringement of the right has taken place must depend upon the construction of the grant. But where a right has been acquired by *implied grant* or under the Prescription Act, the owner of the right is entitled to prevent any person from building so close to the window in respect of which the light is acquired as to render the occupation of the house in which the window is situated uncomfortable according to the ordinary notions of mankind, and (in the case of business premises) to prevent the owner from carrying on business as beneficially as before (*t*). The sole question to be determined in deciding whether a right to light has been so far infringed as to give rise to an action is whether the obstruction is so great as to amount to a nuisance (*u*). It follows, therefore, that the use of an extraordinary amount of light for twenty years will not give rise to a right to receive that amount of light always, because the question whether an obstruction of light is so great as to be a nuisance cannot be affected by any considerations of what the light has been used for (*w*). Very generally speaking, an obstruction of the light which flows to a window will not be considered a nuisance if the light which remains can still flow to the window at an angle of forty five degrees with the horizontal, especially if there is good light from other directions as well (*x*). And in a recent case a good illustration is given of the variation in light an obstruction may afford and the principles applicable (*y*).

ART. 108.—*Disturbance of Water Rights.*

(1) Every owner of land on the banks of a natural stream has a right *ex jure naturæ* to the ordinary use of the water which flows past his land (*e.g.*, for irrigation, feeding cattle, domestic

(*t*) *Colls* v. *Home and Colonial Stores*, [1904] A. C. 179.

(*u*) *Ibid.*, *per* Lord DAVEY, at p. 204.

(*w*) *Ambler* v. *Gordon*, [1905] 1 K. B. 417.

(*x*) *Per* Lord LINDLEY in *Colls* v. *Home and Colonial Stores*, [1904] A. C., at p. 210; and see *Kine* v. *Jolly*, [1905] 1 Ch. 480 [C. A.].

(*y*) *Davis* v. *Marrable*, [1913] 2 Ch. 421.

Art. 108.

purposes, etc.). Such an owner may also make use of the water for other purposes than ordinary ones, provided that, in so doing, he does not interfere with the similar rights of other riparian owners lower down the stream (*z*).

(2) An artificial watercourse may have been originally made under such circumstances, and have been so used, as to give to the owners on each side all the rights which a riparian proprietor would have had if it had been a natural stream (*a*).

(3) There is, however, no right to the continued flow of water which runs through natural underground channels, which are *undefined* or *unknown*, and can *only be ascertained* by excavation (*b*).

(4) No one has a right to pollute the water percolating under his own land and flowing thence by underground channels into another's land so as to poison the water which that other has a right to use (*c*).

Illustrations. Rights of riparian owners.

(1) Every riparian owner may reasonably use the stream for drinking, watering his cattle, or turning his mill, and other purposes connected with his tenement, provided he does not thereby seriously diminish the stream (*d*). But he has no right to divert the water to a place outside his

(*z*) *Miner* v. *Gilmour*, 12 Moo. P. C. C. 131; *Embrey* v. *Owen*, 6 Ex. 353.

(*a*) *Baily & Co.* v. *Clark, Son and Morland*, [1902] 1 Ch. 649 [C. A.]; *Whitmore's (Edenbridge), Limited* v. *Stanford*, [1909] 1 Ch. 427; *Stollmeyer* v. *Trinidad Petroleum Development Co.*, [1918] A. C. 498.

(*b*) *Chasemore* v. *Richards*, 7 H. L. Cas. 349; *Bradford Corporation* v. *Ferrand*, [1902] 2 Ch. 655.

(*c*) *Ballard* v. *Tomlinson*, 29 Ch. D. 115 [C. A.].

(*d*) *Embrey* v. *Owen*, 6 Ex. 353; *White (John) & Sons* v. *White (J. and M.)*, [1906] A. C. 72.

tenement, and there consume it for purposes unconnected with the tenement (*e*). Art. 108.

(2) If the rights of a riparian proprietor are interfered with, as by diverting the stream or abstracting or fouling the water, he may maintain an action against the wrong-doer for violation of the right, even though he may not be able to prove that he has suffered any actual loss (*f*). So if one erects a weir which affects the flow of water to riparian owners lower down the river, an injunction will be granted (*g*). Disturbance of riparian rights.

(3) But where a riparian owner takes water from a river, and after using it for cooling certain apparatus returns it undiminished in quantity and unpolluted in quality, a lower riparian owner has no right of action. For his only right is to have the water abundant and undefiled, and that right is not infringed (*h*).

(4) The owner of land containing underground water, which percolates by *undefined* channels, or by defined but *unascertained* channels, and flows to the land of a neighbour, has the right to divert or appropriate the water within his own land so as to deprive his neighbour of it (*i*). The same rule applies to common surface water rising out of springy or boggy ground and flowing in no defined channel (*k*). Abstracting underground water.

(*e*) *McCartney* v. *Londonderry and Lough Swilly Rail. Co.*, [1904] A. C. 301 ; *Att.-Gen.* v. *Great Northern Rail. Co.* (1908), 72 J. P. 442.

(*f*) *Wood* v. *Waud*, 3 Ex. 748 ; *Embrey* v. *Owen*, 6 Ex. 353 ; *Crossley* v. *Lightowler*, L. R. 2 Ch. 478.

(*g*) *Belfast Ropeworks* v. *Boyd*, 21 L. R. Ir. 560 [C. A.].

(*h*) *Kensit* v. *Great Eastern Rail. Co.*, 27 Ch. D. 122 [C. A.]. In that case the water was abstracted by a non-riparian owner under a licence from a riparian owner. This licence, however, could not confer any right, as a riparian owner clearly cannot confer on others such rights as he has as riparian owner. But, as the action failed against the non-riparian owner, *a fortiori* it would against a riparian owner taking away water and returning it undiminished and unpolluted.

(*i*) *Chasemore* v. *Richards*, 7 H. L. Cas. 349 ; *Bradford Corporation* v. *Ferrand*, [1902] 2 Ch. 655 ; *Bradford Corporation* v. *Pickles*, [1895] A. C. 587, see *ante*, p. 230.

(*k*) *Rawstron* v. *Taylor*, 11 Ex. 369.

Art. 108.

Fouling underground water.

(5) But although there can be no *property* in water running through *underground undefined* channels, yet no one is entitled to pollute water flowing beneath another's land. Thus, in *Ballard* v. *Tomlinson* (*l*), where neighbours each possessed a well, and one of them turned sewage into his well, in consequence whereof the well of the other became polluted, it was held by the Court of Appeal that an action lay; for there is a considerable difference between intercepting water in which no property exists, on the one hand, and sending a new, foreign and deleterious substance on to another's property, on the other. The one merely deprives a man of something in which he has no property, the other causes an active nuisance.

Exception. Prescriptive rights.

Rights in derogation of those of the other riparian proprietors may be gained by grant or prescription (*m*).

ART. 109.—*Disturbance of Private Rights of Way.*

(1) A right of way over the land of another can only arise by grant, express or implied, or by prescription.

(2) A person commits a tort who disturbs the enjoyment of a right of way by blocking it up permanently or temporarily, or by otherwise preventing its free user.

(3) But a right of way once created may be lost through non-user (*n*).

Right restricted by the terms of the grant or the extent of the user.

(1) We are here dealing with private rights of way, as distinguished from public rights of way. A public way or highway is a right enjoyed by the public to pass over land. A private right of way is a right one person may enjoy by grant or prescription to pass over another's land, or which an owner of land may have by grant or prescription for

(*l*) 29 Ch. D. 115.

(*m*) See *Mason* v. *Hill*, 3 B. & Ad. 304; *Carlyon* v. *Lovering*, 1 H. & N. 784; *Whitehead* v. *Parks* (1858), 2 H. & N. 870.

(*n*) *Swan* v. *Sinclair*, [1925] A. C. 227.

himself, his tenants and servants to pass over the lands of another. **Art. 109.**

There may also by custom be a way which can only be lawfully used by the inhabitants of a parish for going to and from the parish church (*o*).

(2) It does not require a permanent obstruction to give rise to a right of action. Thus padlocking a gate (*p*), or permitting carts or wagons to remain stationary on the road in the course of loading and unloading, in such a way as to obstruct the passage over the road, will give rise to an action (*q*). Obstruction of rights of way.

(*o*) See *Brocklebank* v. *Thompson*, [1903] 2 Ch. 344.
(*p*) *Kidgill* v. *Moor*, 9 C. B. 364.
(*q*) *Thorpe* v. *Brumfitt*, L. R. 8 Ch. 650.

CHAPTER XII.

TRESPASS TO THE PERSON.

Introductory.

In the case of most of the torts which we have hitherto considered, there was a wrongful act distinct from the damage to the plaintiff, and which would, if it had not been followed by damage, have given no right of action. But in the case of trespass to the person, and of trespass to land and goods, the wrongful act and the damage resulting from it are practically indivisible. These are what are spoken of in many text-books as *injuriæ*. They require no proof of damage resulting from the wrongful act. The mere fact that a private right has been infringed **without lawful excuse,** constitutes of itself both wrongful act and damage, and gives the party affronted a right of action, even although his actual surroundings may have been improved rather than depreciated, *e.g.*, by false imprisonment.

Trespass consists in (a) infringements of the right of safety and freedom of the person (trespass to the person); (b) infringements of rights of real property (trespass to land, which includes an invasion of the owner's right to the space above his land where such invasion is of an effective nature, *i.e.*, overhanging branches) (*a*); and (c) infringements of rights to goods (trespass to goods).

Art. 110.—*General Liability for Trespass to the Person.*

(1) Trespass to the person may be by assault, battery, or false imprisonment.

(2) Any person who commits a trespass to the person whether by assault, battery, or imprisonment without lawful justification commits a tort.

(*a*) *Lemmon* v. *Webb*, [1895] A. C. 1.

Art. 110.

Ancient classification.

The older writers speak of six kinds of trespasses to the person: threats, assault, battery, wounding, mayhem (or maiming) and false imprisonment. But at the present time it is sufficient to distinguish the three groups above mentioned.

Onus of proof.

Primâ facie every hostile interference with the person or liberty of another is wrongful without proof of damage; but as we shall see, acts which are *primâ facie* trespasses may often be justified. The burden of proof of justification always lies on the defendant. The plaintiff need only prove that without his consent the defendant committed an act which would *primâ facie* amount to a trespass to the person, and it is for defendant to justify if he can.

ART. 111.—*Definition of Assault.*

An assault is an attempt or offer to apply force to the person of another directly or indirectly if the person making the attempt or offer causes the other to believe on reasonable grounds that he has the present ability to execute his purpose (*aa*).

Attempt.

(1) Thus, if one make an attempt, and have at the time of making such attempt a present *primâ facie* ability to do harm to the person of another, although no harm be actually done, it is nevertheless an assault. For example, menacing with a stick a person within reach thereof, although no blow be struck (*b*); or striking at a person who wards off the blow with his umbrella or walking-stick, would constitute assaults.

Threat.

(2) But a mere verbal threat is no assault; nor is a threat consisting not of words but gestures, unless the other party be induced on reasonable grounds to believe that there is present ability to carry it out. The essence of the tort is *that the wrongdoer puts the other in present fear of violence*. This was illustrated by POLLOCK, C.B., in *Cobbett* v. *Grey* (*c*). "If," said the learned judge, "you

(*aa*) See the Criminal Code (Indictable Offences) Bill, 1879, s. 3.
(*b*) *Read* v. *Coker*, 13 C. B. 850.
(*c*) 4 Ex. 729, at p. 744.

direct a weapon, or if you raise your fist within those limits which give you the means of striking, that may be an assault; but if you simply say, at such a distance as that at which you cannot commit an assault (*d*), 'I will commit an assault,' I think that is not an assault." Art. 111.

(3) To constitute an assault there must be an *attempt*. Therefore, if a man says that he would hit another were it not for something which withholds him, that is no assault, as there is no apparent attempt (*e*).

(4) For the same reason, shaking a stick in sport at another is not actionable (*f*).

ART. 112.—*Definition of Battery.*

(1) Battery consists in touching another's person hostilely or against his will, however slightly (*g*).

(2) If the violence be so severe as to wound, and *a fortiori* if the hurt amount to a "mayhem" (that is, a deprivation of a member serviceable for defence in fight), the damages will be greater than those awarded for a mere battery; but otherwise the same rules of law apply to these injuries as to ordinary batteries.

(1) This touching may be occasioned by a missile or any instrument set in motion by the defendant, as by throwing water over the plaintiff (*h*), or spitting in his face, or causing another to be medically examined against his or her will (*i*). In accordance with the rule, a battery must be involuntary: therefore a beating voluntarily suffered is not actionable; for *volenti non fit injuria* (*j*). Illustrations.

(2) Merely touching a person in a friendly way in order to engage his attention, is no battery (*k*). Friendly touching.

(*d*) *Query*—Battery. (*e*) *Tuberville* v. *Savage*, 1 Mod. Rep. 3.
(*f*) *Christopherson* v. *Blare*, 11 Q. B. 473, at p. 477.
(*g*) *Rawlings* v. *Till*, 3 M. & W. 28.
(*h*) *Pursell* v. *Horn*, 8 A. & E. 602.
(*i*) *Latter* v. *Braddell and Sutcliffe* (1881), 44 L. T. 369 [C. A.].
(*j*) *Christopherson* v. *Blare*, 11 Q. B. 473.
(*k*) *Coward* v. *Baddeley*, 28 L. J. Ex. 260.

Art. 112.

Pure accident.

(3) An entirely unintentional touching, which is the result of pure accident, does not amount to trespass. Where one of a shooting party fired at a pheasant and a shot from his gun glanced off a tree and accidentally wounded the plaintiff, a carrier, it was held that there was no trespass (*l*). But whenever an injury to the person is the result of an act of direct force, it amounts to trespass to the person if it is wrongful, either as being **wilful** or as being **the result of negligence** (*m*).

Accident in course of doing unlawful act.

(4) But a touch unintentional and without negligence is an assault if it be done **in the course of doing an unlawful act** (*n*). Thus, where a tramway company was authorised by statute to run a steam tramcar on a public road, the statute must be taken to impose on the company a duty to see that the cars and tramway, and all necessary apparatus, are kept in proper condition for this purpose. If they fail to do so, and the tramway be in an improper condition, then, in running their cars on that tramway, they are doing **that which they are not authorised to do by their Act.** They are only authorised to be on the highway at all by their Act; and as regards the public, they can only justify using the tramway if they are doing what the Act allows them to do. If, therefore (apart from any question of negligence), a car runs on the defective tramway, and injures a passer-by, the company will be liable; for it is a direct injury to the person done in the course of doing an unlawful act, and without justification or excuse (*o*).

ART. 113.—*Definition of False Imprisonment.*

False imprisonment consists in the imposition of a total restraint for some period, however short, upon the liberty of another, without sufficient lawful justification (*p*). The restraint

(*l*) *Stanley* v. *Powell*, [1891] 1 Q. B. 86; *The Nitro-glycerine Case* (1872), 15 Wall. 524.

(*m*) *Per* BRAMWELL, B., in *Holmes* v. *Mather*, L. R. 10 Ex. 261.

(*n*) *Sadler* v. *South Staffordshire and Birmingham District Steam Tramways Co.*, 23 Q. B. D. 17 [C. A.].

(*o*) *Ibid.*

(*p*) *Bird* v. *Jones*, 7 Q. B. 742.

may be either physical or by a mere show of authority. Art. 113.

Moral restraint.

Imprisonment does not necessarily imply incarceration, but any restraint by force or show of authority. For instance, where a bailiff tells a person that he has a writ against him, and thereupon such person peaceably accompanies him, that constitutes an imprisonment (*q*). So, too, it is imprisonment if one is restrained in his own house from leaving a room and going upstairs (*r*). But some *total* restraint there *must* be, for a partial restraint of locomotion in a particular direction (as by preventing the plaintiff from exercising his right of way over a bridge) is no imprisonment; for no restraint is thereby put upon his liberty (*s*).

Actual restraint for however short a time constitutes imprisonment—as when a prisoner who has been acquitted was taken down to the cells and detained for a few minutes whilst questions were put to him by the warders (*t*).

False imprisonment and malicious prosecution distinguished.

The distinction between false imprisonment and malicious prosecution is that the former unjustifiably restrains the liberty of the person—the latter is the malicious institution against another of bankruptcy or criminal proceedings without reasonable cause and may frequently be the actual precursor of false imprisonment, but malicious prosecution sets in motion *judicial* process. False imprisonment sets in motion *executive* process.

Habeas corpus.

In addition to the remedy by action, the law affords a peculiar and unique summary relief to a person wrongfully imprisoned, viz., the writ of *habeas corpus ad subjiciendum* (*tt*).

This writ may be obtained by motion made to any superior court, or to any judge when those courts are not sitting, by any of his Majesty's subjects. The party moving must show probable cause that the person whose release he desires is wrongfully detained. If the court or judge thinks

(*q*) *Warner* v. *Riddiford*, 4 C. B. (N.S.) 180.

(*r*) *Grainger* v. *Hill*, 4 Bing. N. C. 212; see *Harvey* v. *Mayne*, 6 Ir. C. L. R. 417.

(*s*) *Bird* v. *Jones*, *supra*.

(*t*) *Mee* v. *Cruikshank*, 86 L. T. 708.

(*tt*) *R.* v. *Home Secretary ex parte O'Brien*, [1923] A. C. 603 [H. L.].

Art. 113. that there is reasonable ground for suspecting illegality, the writ is ordered to issue, commanding the detainer to produce the party detained in court on a specified day, when the question is summarily determined. If the detainer can justify the detention, the prisoner is remitted to his custody. If not, he is discharged, and may then have his remedy by action (*u*).

ART. 114.—*Justification of Trespass to the Person.*

A trespass to the person, whether amounting to assault, battery, or false imprisonment, may be justified by the defendant as being authorised by the exercise of a right at common law or by statute (*v*), and if the defendant prove the facts alleged in justification, the plaintiff must fail.

Justification.

Trespass to the person may be justified as being (a) in defence of property or person (*x*); (b) as being in the exercise of parental or other special authority (*y*); (c) as being an arrest or imprisonment made by judicial authority (*z*); (d) as being an arrest on suspicion of felony or misdemeanor, or for preservation of the peace (*a*); (e) for execution of legal process, *e.g.*, search authorised by law (*b*); (f) inevitable accident.

But in every case the force used must not exceed that which is reasonably required in the circumstances, and any excess of violence amounts to a trespass.

ART. 115.—*Self-defence as Justification of Assault and Battery.*

Assault and battery is justified if made in self-defence or in defence of real or personal property, provided the force used does not exceed that

(*u*) See 31 Car. 2, c. 2, and 56 Geo. 3, c. 100.
(*v*) *E.g.*, the Lunacy Acts.
(*x*) See Art. 115.
(*y*) See Art. 116.
(*z*) See Art. 117.
(*a*) See Arts. 118–122.
(*b*) *Taylor* v. *Pritchard*, [1910] 2 K. B. 320.

which is reasonably required in the circumstances. Art. 115.

Any violence in excess of what is reasonably necessary is a trespass.

(1) A battery is justifiable if committed in self-defence. Such a plea is called a plea of "son assault demesne." But, to support it, the battery so justified must have been committed in actual defence, and not afterwards and in mere retaliation (*c*). Neither does every common battery excuse a mayhem. As, if "A. strike B., B. cannot justify drawing his sword, and cutting off A.'s hand," unless there was a dangerous scuffle, and the mayhem was inflicted in self-preservation (*d*). It is a matter of doubt if the Squib Case was really one of trespass by the intermediate actors (*dd*). Self-defence.

(2) A battery committed in defence of real or personal property is justifiable. Thus, if one forcibly enters my house, I may forcibly eject him; but if he enters quietly, **I must first request him to leave.** If after that he still refuses, I may use sufficient force to remove him, in resisting which *he* will be guilty of an assault (*e*). Defence of property.

(3) But since the Judicature Act a licensee whose licensor can be compelled by injunction to allow him to do the act licensed cannot be treated as a trespasser because he does that act. In *Hurst* v. *Picture Theatres, Limited* (*g*), it was held by the Court of Appeal that a person who had bought a ticket for a seat at a cinema performance could sue *in tort* for damages for forcible ejection by the defendants' servants acting on the erroneous impression that he had obtained admission without payment.

(4) It should be added that an owner of property is *not* justified in forcibly detaining another to compel restitution of his property (*h*). Imprisonment not justified.

(*c*) *Cockroft* v. *Smith*, 11 Mod. Rep. 43.

(*d*) *Cook* v. *Beal*, Ld. Raym. 177.

(*dd*) *Scott* v. *Shepherd* (1773), 2 W. Bl. 892.

(*e*) *Wheeler* v. *Whiting*, 9 C. & P. 262; *Hemmings and Wife* v. *Stoke Poges Golf Club*, [1920] 1 K. B. 720.

(*g*) [1915] 1 K. B. 1.

(*h*) *Harvey* v. *Mayne*, 6 Ir. C. L. 471.

Art. 116.

ART. 116.—*Justification by Parental or Other Authority.*

Assault and imprisonment may be justified as being done in the lawful exercise of parental or other authority, *e.g.*, within the Lunacy Acts (*hh*).

Parental and other authority.

(1) A father may moderately chastise his son, and this authority he may delegate to a schoolmaster. Schoolmasters are justified in moderately chastising and in putting restraint on the liberty of their pupils; and this authority extends to chastisement for offences committed whilst going to and returning from school (*i*). But for any excess of punishment an action for assault or false imprisonment lies. So, too, a master may chastise his apprentice (*j*.)

Marital authority.

(2) It was formerly thought that a husband had the right of chastising and imprisoning his wife—but this can no longer be regarded as the law (*k*).

Naval and military officers.

(3) Officers in the army and navy, and officers of territorials have statutory authority by which they may justify assaults and imprisonment of the men under them as being authorised punishments for military or naval offences (*l*).

ART. 117.—*Justification by Judicial Authority.*

When a person is arrested or imprisoned by judicial authority no action for trespass to the person lies against the judge who gives the authority, or against persons executing his orders, or against the person who set the law in motion.

(*hh*) *Everett* v. *Griffiths*, [1921] 1 A. C. 631; *Harnett* v. *Bond* (1924), 40 T. L. R. 693, affirmed House of Lords 1925.

(*i*) *Cleary* v. *Booth*, [1893] 1 Q. B. 465.

(*j*) *Penn* v. *Ward*, 2 C. M. & R. 338.

(*k*) *R.* v. *Jackson*, [1891] 1 Q. B. 671 [C. A.]; *Scully* v. *Scully* (1921), *Times* Newspaper, 24th June, *et seq.*

(*l*) See *Marks* v. *Frogley*, [1898] 1 Q. B. 888 [C. A.].

Art. 117.

Distinction between false imprisonment and malicious prosecution.

This general proposition must be read with the qualifications and explanation given in Arts. 8 and 9, where we have discussed the consequences of irregularities and want of jurisdiction. Assuming the judgment, sentence, or order to be regular, and the imprisonment or arrest to be authorised by it, the protection is absolute, and no action for assault or false imprisonment will lie against the judge, or against the persons who carry out the order, or against the person who procured the order from the judge.

(1) So if I lay an information before a justice, upon which he issues his warrant for the arrest of the alleged offender, it is his arrest and not mine. Though I may be liable in an action for malicious prosecution I cannot be liable in an action for false imprisonment.

(2) But if, without the interposition of any judicial authority, I request a constable to arrest a person, I make him my agent for that purpose, and, if the arrest is not justifiable on some ground, I am liable as if I had myself arrested him. Accordingly it is important to distinguish clearly cases where the arrest is *judicial* from those where it is not. The distinction is thus laid down by WILLES, J. (*m*) :

Rule laid down by WILLES, J.

"The distinction between false imprisonment and malicious prosecution is well illustrated by the case where, parties being before a magistrate, one makes a charge against another, whereupon the magistrate orders the person charged to be taken into custody and detained until the matter can be investigated. The party making the charge is not liable to an action for false imprisonment because he does not set a ministerial officer in motion but a judicial officer. The opinion and judgment of a judicial officer are interposed between the charge and the imprisonment. There is, therefore, at once a line drawn between the end of the imprisonment by the ministerial officer and the commencement of the proceedings before the judicial officer."

(*m*) *Austin* v. *Dowling*, L. R. 5 C. P. 534, at p. 540.

Art. 117.

(3) False imprisonment only lies where the defendant has **taken on himself the responsibility of directing the imprisonment.** When a person merely gives information to a police officer, and he arrests on his own initiative, the person giving the information is not guilty of a trespass (*n*), though, of course, the police officer may be.

So, too, signing a charge sheet is not in itself evidence of anything supporting an action for false imprisonment against the person who signs (*n*). Though, when accompanied by other circumstances (as in *Austin* v. *Dowling* (*o*)), it may show that the person who signs authorises the imprisonment.

ART. 118.—*Power of Magistrates to Arrest or order Arrest.*

If a felony, or breach of the peace, be committed **in view of a justice,** he may personally arrest the offender or command a bystander to do so, such command being a good warrant. But if he be not present, he must issue his written warrant to apprehend the offender (*p*).

Warrant for arrest.

Except in the case mentioned in this Article a magistrate can only justify an arrest made by his order if he has issued a written warrant for arresting the person arrested. A warrant is an authority to the person to whom it is directed (usually a constable) to arrest the person named therein. It is issued by a justice of the peace upon information given to him that the person to be arrested is suspected of having committed an offence. The magistrate in issuing a warrant acts judicially, and at common law the warrant was an absolute justification for any arrest made by a constable within the terms of the warrant, provided the magistrate had jurisdiction (*q*). But there are some cases in which an arrest may lawfully be made

(*n*) *Grinham* v. *Willey*, 4 H. & N. 496; followed in *Sewell* v. *National Telephone Co.*, [1907] 1 K. B. 557.

(*o*) L. R. 5 C. P. 534.

(*p*) 2 Hale P. C. 86.

(*q*) See *ante*, Art. 9.

without warrant; these are dealt with in the following Articles. Art. 118.

ART. 119.—*Power of Constables and Others to Arrest in Obedience to Warrant.*

No action lies against a constable, or any person acting by his order and in his aid, for anything done in obedience to any warrant issued by any justice of the peace notwithstanding any defect of jurisdiction of such justice (*r*).

NOTE.—At common law an action lay against a constable if he arrested a person upon a warrant issued by a justice who had no jurisdiction to issue it (see *ante*, Art. 9), but constables and those assisting them are protected by this enactment, whether the justice of the peace has jurisdiction to issue the warrant, or not.

The statute does not, however, afford any protection to a constable who does something not authorised by the warrant, as, *e.g.*, if he arrests the wrong person.

ART. 120.—*Arrest for Felony without Warrant.*

(1) **Any person** may arrest another without a warrant **if a felony has in fact been committed,** and he has reasonable grounds for suspecting that the person arrested has committed the felony.

(2) **A constable** may arrest any person without a warrant **if he has reasonable grounds** for thinking that a felony has been committed, and that it has been committed by the person arrested.

Felons.

A treason or felony having *been actually committed*, a private person may arrest one *reasonably*, although erroneously, suspected by him; but the suspicion must not be mere surmise, and the defendant must show that

(*r*) 24 Geo. 2, c. 44, s. 6.

Art. 120.

the particular felony in respect of which the plaintiff was arrested had been in fact committed (*s*).

In an action for false imprisonment, where the defendant, in order to justify himself, must prove that a felony was in fact committed, and where it appears that if it were committed it could only have been committed by the plaintiff, the fact that the latter has been tried for the alleged felony and acquitted, does not estop the defendant from giving evidence that he did really commit it. For the verdict in the criminal trial was *res inter alios acta*, and is not binding on the defendant in a distinct proceeding (*t*).

Cases of suspected felony.

As we have seen, a *private* person can only arrest a suspected felon in cases where a felony has actually been committed by **some one**; and if it should turn out that no such felony was ever committed, he will be liable, however reasonable his suspicions may have been. It would, however, be obviously absurd to require a constable to satisfy himself at his peril that a felony had been in fact committed before acting; and consequently the law provides that a constable may make an arrest merely upon reasonable suspicion that a felony has been committed, and that the party arrested was the doer; and even though it should turn out eventually that no felony has been committed, he will not be liable (*u*). The suspicion, however, must be a reasonable one, or the constable will be liable.

Constables.

The constable was formerly an officer appointed for a constablewick or other district, who had at common law certain powers within that district. Police constables are now appointed for counties and boroughs under various statutes, and the constables so appointed have, throughout the counties or boroughs for which they are appointed, the powers which at common law a constable had within his constablewick, together with other statutory powers (*x*).

(*s*) *Beckwith* v. *Philby*, 6 B. & C. 635; *Walters* v. *Smith*, [1914] 1 K. B. 595.

(*t*) *Cahill* v. *Fitzgibbon*, 16 L. R. Ir. 371.

(*u*) *Marsh* v. *Loader*, 14 C. B. (N.S.) 535; *Griffin* v. *Coleman*, 28 L. J. Ex. 134.

(*x*) See the Police Acts, especially s. 8 of the County Police Act, 1839, and the Municipal Corporations Act, 1882, s. 191.

Art. 120.
Illustrations.

(1) Thus, a person told the defendant, a constable, that a year previously he had had his harness stolen, and that he now saw it on the plaintiff's horse, and thereupon the defendant went up to the plaintiff and asked him where he got his harness from, and the plaintiff making answer that he had bought it from a person unknown to him, the constable took him into custody, although he had known him to be a respectable householder for twenty years. It was held that the constable had no reasonable cause for suspecting the plaintiff, and was consequently liable for the false imprisonment (*y*). But, on the other hand, where a constable knows that a warrant is out against a man, that is sufficient ground for his reasonably suspecting that a felony has been committed (*z*).

(2) But where one man falsely charges another with having committed a felony, and a constable, at and by his direction, takes the other into custody, the party making the charge, and not the constable, is liable (*a*). "It would be most mischievous," Lord MANSFIELD remarks, "that the officer should be bound first to try, and at his peril exercise his judgment as to the truth of the charge. He that makes the charge alone is answerable" (*b*).

ART. 121.—*Power of Arrest for Preservation of the Peace.*

For the sake of preserving the peace, any person who sees it broken may without a warrant arrest him whom he sees breaking it at the moment of the affray or immediately after, so long as there is a reasonable prospect of a renewal of the affray (*c*).

The right of arrest stated in this Article is only to prevent disturbances of the peace. It seems that all persons taking part in the affray may be arrested—provided

(*y*) *Hogg* v. *Ward*, 27 L. J. Ex. 443.
(*z*) *Creagh* v. *Gamble*, 24 L. R. Ir. 458.
(*a*) *Davis* v. *Russell*, 5 Bing. 354.
(*b*) *Griffin* v. *Coleman*, 4 H. & N. 265.
(*c*) *Timothy* v. *Simpson*, 1 Cr. M. & R. 757.

Art. 121.

there is a prospect of the affray being renewed—and may be detained till the heat is over, and may then be delivered to a constable to be taken before a magistrate. Thus, when the plaintiff entered the defendant's shop and exchanged blows with a shopman, the defendant was justified in arresting him and handing him over to the constable, on the ground that though the affray had not been actually committed in his presence, yet the plaintiff persisted in remaining on the premises in such circumstances as made it seem probable that he would renew the disturbance unless he was taken into custody (*cc*). In such circumstances it seems that a constable is justified in taking the disturber upon the information of one who has seen the affray (even though he was not himself present) if there is a prospect of its being renewed (*cc*). There is some authority for saying that a constable may arrest immediately after an affray even though there is no prospect of the affray being renewed; but the proposition is open to doubt.

ART. 122.—*Arrest for Misdemeanor.*

No person has at common law power to arrest another for a misdemeanor without a warrant; but by various statutes powers of arrest for misdemeanor are given to constables and others to arrest without a warrant.

The following list is not complete, but it contains some examples of statutory powers of arrest for misdemeanor:

Night offenders.

(1) Any person may arrest and take before a justice one *found committing* an indictable offence between 9 P.M. and 6 A.M. (*d*).

Malicious injurers.

(2) The owner of property or his servant, or a constable, may arrest and take before a magistrate anyone *found committing* malicious injury to such property (*e*).

(*cc*) *Timothy* v. *Simpson*, 1 Cr. M. & R. 757.

(*d*) 14 & 15 Vict. c. 19, s. 11; and see *Trebeck* v. *Croudace*, [1918] 1 K. B. 158, a case under s. 12 of the Licensing Act, 1872.

(*e*) 14 & 15 Vict. c. 19, s. 11; 24 & 25 Vict. c. 97, s. 61.

(3) Any person may arrest and take before a magistrate one *found committing* an act of vagrancy (*f*). **Art. 122.** Vagrants.

N.B.—Such acts are soliciting alms by exposure of wounds, indecent exposure, false pretences, fortune-telling, betting, gaming in the public streets, and many other acts, for which one must refer to the fourth section of the Act.

(4) A constable or churchwarden may apprehend, and take before a magistrate, any person disturbing divine service (*g*). Brawlers.

(5) Many Acts of Parliament give powers of arrest of persons committing offences and refusing to give their names and addresses when requested. See, for instance, the Railways Clauses Consolidation Act, 1845, s. 154, and the Motor Car Act, 1903. Other Acts.

ART. 123.—*Institution of Criminal Proceedings endangers Right of Action for Assault.*

Where any person unlawfully assaults or beats another, two justices of the peace, upon complaint of the party aggrieved, may hear and determine such offence, and if they deem the offence not to be proved, or find it to have been justified, or so trifling as not to merit any punishment, and accordingly dismiss the complaint, they must forthwith make out a certificate stating the fact of such dismissal, and deliver the same to the party charged.

If any person shall have **obtained a certificate of dismissal or having been convicted shall have suffered the punishment inflicted,** he shall be released from all further or other proceedings, civil or criminal, for the same cause (*h*).

(1) A certificate can only be granted by magistrates where there has been a hearing upon the merits. Where the prosecutor, having obtained a summons, did not Comment.

(*f*) 5 Geo. 4, c. 83. (*g*) 23 & 24 Vict. c. 32, s. 3.
(*h*) 24 & 25 Vict. c. 100, ss. 42–45.

Art. 123.

attend to give evidence and the magistrates dismissed the summons, the magistrates had no jurisdiction to give a certificate of dismissal (*i*). The fact that the accused has been ordered by the magistrates to enter into recognizances to keep the peace and to pay the recognizance fee, will not constitute a bar to an action (*j*).

(2) The granting a certificate by magistrates where the complaint is dismissed, is not merely discretionary. Magistrates are bound, on proper application, to give the certificate mentioned in the section (*k*); and, if they refuse to do so, may be compelled by *mandamus* (*l*).

(3) The words "from all further or other proceedings, civil or criminal, for the same cause," include all proceedings against the defendant arising out of the same assault, whether taken by the prosecutor or by any *other* person (*m*) consequentially aggrieved thereby (*n*).

ART. 124.—*Amount of Damages.*

In assessing the damages for an assault, or battery, or false imprisonment (*o*), the time when, and the place in which, the trespass took place should be taken into consideration, as also circumstances of wanton injury or contumely (*p*). See also Art. 34.

Thus, an assault committed in a public place calls for much higher damages than one committed where there are few to witness it. "It is a greater insult," remarks BATHURST, J., in *Tullidge* v. *Wade* (*q*), "to be beaten upon the Royal Exchange than in a private room."

(*i*) *Reed* v. *Nutt*, 24 Q. B. D. 669.
(*j*) *Hartley* v. *Hindmarsh*, L. R. 1 C. P. 553.
(*k*) *Hancock* v. *Somes*, 28 L. J. M. C. 196.
(*l*) *Costar* v. *Hetherington*, 28 L. J. M. C. 198.
(*m*) *E.g.*, the complainant's husband.
(*n*) *Masper* v. *Brown*, 1 C. P. D. 97.
(*o*) *Huckle* v. *Money* (1763), 2 Wilson 205.
(*p*) *Merest* v. *Harvey* (1814), 5 Taunt. 422.
(*q*) 3 Wils. 18, at p. 19.

CHAPTER XIII.

OF TRESPASS TO LAND AND DISPOSSESSION (*a*).

SECTION I.—OF TRESPASS *QUARE CLAUSUM FREGIT*.

ART. 125.—*Definition.*

TRESPASS *quare clausum fregit* is committed in respect of another man's land, by entry on the same without lawful authority. It constitutes a tort *without proof of actual damage.*

Illustrations.

(1) Thus, driving nails into another's wall, or placing objects against it, are trespasses (*aa*); or fox-hunting across land against the will of the owner (*b*).

Trespass of cattle.

(2) So, it is generally a trespass to allow one's cattle to stray on to another's land. Thus, where the plaintiff's mare was injured by the defendant's horse biting and kicking her *through* the fence separating plaintiff's and defendant's land, it was held that this was a trespass for which the defendant was liable apart from any question of negligence (*c*).

Exceeding authority.

(3) Where one has authority to use another's land for a particular purpose, any user going beyond the authorised purpose is a trespass (*cc*).

Trespass on highways.

(4) So, where a public highway runs across the lands of a landowner, the soil of which is vested in the owner, a

(*a*) For fuller information relating to land law the student is referred to the standard works on Real Property, *e.g.*, Challis's Real Property (Butterworth & Co.).

(*aa*) *Lawrence* v. *Obee*, 1 Stark. 22; *Gregory* v. *Piper*, 9 B. & C. 591.

(*b*) *Paul* v. *Summerhayes*, 4 Q. B. D. 9.

(*c*) *Ellis* v. *Loftus Iron Co.*, L. R. 10 C. P. 10.

(*cc*) *The Six Carpenters' Case* (1611), 1 Sm. L. C. 132.

Art. 125.

member of the public who uses the road not merely in exercise of his right of way, but in order to annoy and to interrupt the landowner's sport, is guilty of trespass. For he is using the site of the road for a purpose not covered by his limited right of user (*d*); for the public only have a right to use a highway *for passing and repassing* and not for loitering or depasturing cattle (*e*), or for watching the training of horses on the adjoining lands (*f*).

Exceptions.

In the following cases a person has lawful authority to enter upon another's land:

Retaking goods.

(1) If one takes and places on his *own* land another's goods, the latter may enter and retake them (*g*).

Cattle.

(2) If cattle escape on to another's land through the non-repair of a hedge which that other is bound to repair, the owner of the cattle may enter and drive them out (*h*).

Distraining for rent.

(3) So a landlord may enter his tenant's house to distrain for rent, or a sheriff to do execution; but they may not break open the outer door of a house (*i*).

Reversioner inspecting premises.

(4) A reversioner of lands may enter in order to see that no waste is being committed (*k*).

Grantee of easement.

(5) And the grantee of an easement may enter upon the servient tenement in order to do necessary repairs (*l*).

Public rights.

(6) Land may be entered under the authority of a statute (*m*); or in exercise of a public right, as of a highway; or the right to enter an inn, provided there is accommodation (*n*). Also land may be entered to preserve property, *e.g.* where a fire breaks out the tenant of sporting

Works of necessity.

(*d*) *Harrison* v. *Rutland* (*Duke*), [1893] 1 Q. B. 142 [C. A.].
(*e*) *Dovaston* v. *Payne*, 2 H. Bl. 527; and 2 Sm. L. C. 160.
(*f*) *Hickman* v. *Maisey*, [1900] 1 Q. B. 752 [C. A.].
(*g*) *Patrick* v. *Colerick*, 3 M. & W. 483; *Coaker* v. *Willcocks*, [1911] 2 K. B. 124.
(*h*) See *Faldo* v. *Ridge*, Yelv. 74.
(*i*) *Semayne's Case*, 5 Co. Rep. 91 c.; 1 Sm. L. C. 104.
(*k*) *Six Carpenters' Case*, 1 Sm. L. C. 132; 8 Co. Rep. 146 a.
(*l*) *Pomfret* v. *Rycroft*, 1 Saund. 321.
(*m*) *Beaver* v. *Manchester Corporation*, 26 L. J. Q. B. 311.
(*n*) *Six Carpenters' Case*, *supra*; and see *R.* v. *Ivens*, 7 C. & P. 213.

rights may use such methods as are reasonably believed by him to be necessary to preserve his rights, and he will not be liable if it afterwards turns out that the course he adopted, though reasonable, was not necessary (*o*). Art. 125.

(7) Lastly, land may be entered on the ground that it is the defendant's, and that he has a right to immediate possession (*p*). A person in *wrongful* possession cannot treat the rightful owner as a trespasser (*q*). This latter, known as the plea of *liberum tenementum*, is generally pleaded in order to try the title to lands. And a trespasser cannot get damages for forcible entry by the rightful owner unless more force than is necessary is used or there is a want of care in dealing with the trespasser's goods (*r*) *Liberum tenementum*

ART. 126.—*Trespassers* ab initio.

(1) Whenever a person has authority given him by law to enter upon lands or tenements for any purpose, and he goes beyond or abuses such authority by doing that which he has no right to do, then, although the entry was lawful, he will be considered as a trespasser *ab initio*.

(2) But where authority is not given by the law, *but by the party*, and abused, then the person abusing such authority is not a trespasser *ab initio*.

(3) The abuse necessary to render a person a trespasser *ab initio* must be a misfeasance and not a mere nonfeasance (*s*).

Thus, six carpenters entered an inn and were served with wine, for which they paid. Being afterwards at their request supplied with more wine, they refused to pay for Illustration.

(*o*) *Cope* v. *Sharpe*, [1912] 1 K. B. 496 [C. A.].
(*p*) See *Ryan* v. *Clark*, 14 Q. B. 65.
(*q*) *Taunton* v. *Costar*, 7 Term Rep. 431.
(*r*) *Hemmings and Wife* v. *Stoke Poges Golf Club*, [1920] 1 K. B. 720.
(*s*) *Six Carpenters' Case*, 1 Sm. L. C. 132; 8 Co. Rep. 146 a.

Art. 126. it, and upon this it was sought to render them trespassers *ab initio*, but without success; for although they had authority by law to enter (it being a public inn), yet the mere non-payment, being a nonfeasance and not a misfeasance, was not sufficient to render them trespassers (*s*).

At common law this doctrine made a landlord a trespasser *ab initio* when he distrained for rent justly due, and he, or his bailiff, was guilty of any irregularity. This, however, was very hard on landlords, and by the Distress for Rent Act, 1737 (*t*), an irregularity in such circumstances does not make the distrainer a trespasser *ab initio*, and the tenant can only recover for the special damage sustained by the irregularity.

ART. 127.—*Possession necessary to enable the Plaintiff to maintain an Action of Trespass.*

(1) In order to maintain an action of trespass, the plaintiff must be in the possession of the land; for it is an injury to possession rather than to title. A mere *interesse termini* is not sufficient (*u*). But constructive possession, *i.e.*, by a servant or agent, or a present right to possess although no physical transfer has taken place, is sufficient (*v*).

(2) The actual possession of land suffices to maintain an action of trespass against any person wrongfully entering upon it; and if two persons are in possession of land, each asserting his right to it, then the person who has the title to it is to be considered in actual possession, and the other person is a mere trespasser (*w*).

(*s*) *Six Carpenters' Case*, 1 Sm. L. C. 132; 8 Co. Rep. 146 a.

(*t*) 11 Geo. 2, c. 19, ss. 19, 20, and see the Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 8, which gives the same relief in case of any irregularity in a distress for poor rates.

(*u*) *Wallis* v. *Hands*, [1893] 2 Ch. 75.

(*v*) *Glyn* v. *Howell*, [1909] 1 Ch. 666.

(*w*) *Jones* v. *Chapman*, 2 Ex. 803, at p. 821.

(3) Where a person is in possession of land, the onus lies upon the *primâ facie* trespasser to show that he is entitled to enter (*x*). **Art. 127.**

Illustrations.

Possession necessary.

(1) Thus a person entitled to the possession of lands or houses cannot bring an action of trespass against a trespasser until he is in actual possession of them (*y*). But when he has once entered and taken possession, he may maintain trespass against a person who was wrongfully in possession at the time of his entry and continued so afterwards (*z*).

Possession by relation.

(2) A person who is not in actual possession at the time of the trespass may maintain trespass, if at the time of the trespass he was entitled to immediate possession, and at the time of action brought he has actual possession. His possession is then said to relate back in law to the time when the title arose, and he is considered as in possession from that time for the purposes of his action (*a*).

Surface and subsoil in different owners.

(3) Where one parts with the right to the surface of land, retaining only the mines, he cannot maintain an action for trespass to the surface, because he is not in possession of it (*b*); but he may for a trespass to the subsoil, as by digging holes, etc. (*c*). So the owner of the surface cannot maintain trespass for a subterranean encroachment on the minerals (*d*), unless the surface is disturbed thereby.

Highways, etc.

(4) When one dedicates a highway to the public, or grants any other easement on land, possession of the soil is not thereby parted with, but only a right of way or other privilege given (*e*). An action for trespasses committed

(*x*) *Asher* v. *Whitlock*, L. R. 1 Q. B. 1; *Perry* v. *Clissold*, [1907] A. C. 73; *Corporation of Hastings* v. *Ivall* (1874), L. R. 19 Eq. 585.

(*y*) *Ryan* v. *Clark*, 14 Q. B. 65.

(*z*) *Butcher* v. *Butcher*, 7 B. & C. 399, at p. 402.

(*a*) *Anderson* v. *Radcliffe*, El. Bl. & El. 806; *Ocean Accident and Guarantee Corporation* v. *Ilford Gas Co.*, [1905] 2 K. B. 493 [C. A.]; distinguished in *Elliot* v. *Boynton*, [1924] 1 Ch. 236.

(*b*) *Cox* v. *Mousley*, 5 C. B. 533, at p. 546.

(*c*) *Cox* v. *Glue*, 17 L. J. C. P. 162.

(*d*) *Keyse* v. *Powell*, 22 L. J. Q. B. 305.

(*e*) *Goodtitle* v. *Alker*, 1 Burr. 133; *Northampton Corporation* v. *Ward*, 1 Wils. 114.

Art. 127. upon it, as, for instance, by throwing stones on to it, or erecting a bridge over it, may therefore be maintained by the owner of the soil (*f*).

ART. 128.—*Trespasses by Joint Owners.*

Joint tenants, or tenants in common, can only sue one another in trespass for acts done by one inconsistent with the rights of the other (*g*).

Ordinary joint holders.

(1) Among such acts may be mentioned the destruction of buildings (*h*), carrying off of soil (*i*), and expelling the plaintiff from his occupation (*j*).

Co-owners of mines.

(2) But a tenant in common of a coal mine may get the coal, or license another to get it, not appropriating to himself more than his share of the proceeds; for a coal mine is useless unless worked (*k*). If more than the appropriate share be taken the remedy of the co-owner is not an action in tort for trespass, but an action for an account (*l*).

Party-walls.

(3) There is also one other important case of trespass between joint owners, viz., that arising out of a party-wall. If one owner of the wall excludes the other owner entirely from his occupation of it (as, for instance, by destroying it, or building upon it), he thereby commits a trespass; but if he pulls it down for the purpose of rebuilding it, he does not (*m*).

ART. 129.—*Limitation.*

All actions for trespass to land must be commenced within six years next after the cause

(*f*) *Every* v. *Smith*, 26 L. J. Ex. 344; and see Art. 125, Illustration 4, *supra*.

(*g*) See *Jacobs* v. *Seward*, L. R. 5 H. L. 464.

(*h*) *Cresswell* v. *Hedges*, 31 L. J. Ex. 497.

(*i*) *Wilkinson* v. *Haygarth*, 12 Q. B. 837.

(*j*) *Murray* v. *Hall*, 7 C. B. 441.

(*k*) *Job* v. *Potton*, L. R. 20 Eq. 84.

(*l*) *Jacobs* v. *Seward*, *supra*.

(*m*) *Stedman* v. *Smith*, 26 L. J. Q. B. 314; *Cubitt* v. *Porter*, 8 B. & C. 257.

of action arose (*n*); but when a trespass is continuing, there is a new cause of action constantly arising, and the plaintiff may bring successive actions until the trespass ceases (*o*). Art. 129.

ART. 130.—*Remedies other than by Action.*

(1) One who is in possession of land may forcibly turn out another who wrongfully enters, using no more force than is reasonably necessary.

(2) When animals or other chattels are wrongfully upon land the person in possession may distrain them *damage feasant.*

Comment.

Distress damage feasant.

As to forcibly ejecting a trespasser, see *ante*, Art. 115. In the case of animals or other chattels found trespassing, the law gives the person in possession of the land the right to seize and detain them in order to compel the owner to make reasonable compensation for the damage done (*p*). There is no power of sale; and the power of detention is only in respect of the actual damage done by the offending animal, either to the land itself or to other animals on the land (such as damage caused by one horse kicking another) (*q*). This remedy is not, however, available where animals are being actually tended; in such case the person injured must bring his action. A somewhat analogous remedy is allowed in the case of animals *feræ naturæ* reared by a particular person. In such cases the law, not recognising any property in them, does not make their owner liable for their trespasses, but any person injured may shoot or capture them while trespassing. Thus, at common law, I may kill pigeons coming upon my land, but I cannot sue the breeder of them (*r*).

(*n*) Statute of Limitations, 1623 (21 Jac. 1, c. 16), s. 3.

(*o*) *Bowyer* v. *Cook*, 4 C. B. 236.

(*p*) See *Green* v. *Duckett*, 11 Q. B. D. 275; *Ambergate Rail. Co.* v. *Midland Rail. Co.* (1853), 2 E. & B. 793, where a locomotive was distrained.

(*q*) *Boden* v. *Roscoe*, [1894] 1 Q. B. 608.

(*r*) *Hannam* v. *Mockett*, 2 B. & C. 934, *per* BAYLEY, J. But the killing may amount to a criminal offence by the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 23.

Art. 131.

SECTION II.—OF DISPOSSESSION.

ART. 131.—*Definition.*

Dispossession or ouster consists of wrongfully withholding the possession of land from the rightful owner.

Specific remedy.

Since the Judicature Act, 1873, the remedy for this wrong is an action for the recovery of land wherein the plaintiff claims possession of the land.

A successful plaintiff gets a judgment for possession and *mesne profits*, *i.e.*, damages for the profits of the land which the plaintiff has lost whilst the defendant was wrongfully in possession, and for any damage done to the land by him whilst he was in possession.

ART. 132.—*Onus of Proof of Title.*

The law presumes possession to be rightful, and therefore the claimant must recover on the strength of his own title, and not on the weakness of the defendant's (*s*).

Possession *primâ facie* evidence of title.

(1) Thus, mere possession is *primâ facie* evidence of title until the claimant makes out a better one (*t*).

Title of successful claimant need not be indefeasible.

(2) But where the plaintiff makes out a better title than the defendant, he may recover the lands, although such title may not be indefeasible. Thus, where one inclosed waste land, and died without having had twenty years' possession, the heir of his devisee was held entitled to recover it against a person who had entered upon it without any title (*u*).

Jus tertii.

(3) Conversely, a man in possession who may not have an indefeasible title as against a third party, may yet have a better title than the actual claimant, and therefore

(*s*) *Martin* v. *Strachan*, 5 Term Rep. 107.

(*t*) *Doe* d. *Smith* v. *Webber*, 1 A. & E. 119.

(*u*) *Asher* v. *Whitlock*, L. R. 1 Q. B. 1; *Agency Co.* v. *Short* (1888), 13 App. Cas. 293 [P. C.].

Art. 132.

he may set up the right of a third person to the lands, in order to disprove that of the claimant (*w*). But the claimant cannot do the same, for possession is, in general, a good title against all but the true owner (*x*).

Exceptions. Landlord and tenant.

(4) Where the relation of landlord and tenant exists between the plaintiff and defendant, the landlord need not prove his title, but only the expiration of the tenancy; for a tenant cannot in general dispute his landlord's title (*y*), unless a defect in the title appears on the lease itself (*z*). But nevertheless he may show that his landlord's title has *expired*, by assignment, surrender, or otherwise (*a*). The principle does not extend to the title of the party through whom the defendant claims prior to the demise or conveyance to him. Thus, where the plaintiff claims under a grant from A. in 1818, and the defendant under a grant from A. in 1824, the latter may show that A. had no legal estate to grant in 1818 (*b*).

Servants and licensees.

(5) The same principle is applicable to a licensee or servant, who is estopped from disputing the title of his licensor or master (*c*).

ART. 133.—*Limitation.*

No person can bring an action for the recovery of land or rent but within twelve years after the right to maintain such action shall have *accrued* to the claimant, or to the person through whom he claims (*d*).

(*w*) *Doe* d. *Carter* v. *Barnard*, 13 Q. B. 945.

(*x*) *Asher* v. *Whitlock*, L. R. 1 Q. B. 1; *Agency Co.* v. *Short*, *supra*; *Richards* v. *Jenkins*, 17 Q. B. D. 544.

(*y*) *Delaney* v. *Fox*, 26 L. J. C. P. 248.

(*z*) *Saunders* v. *Merryweather*, 35 L. J. Ex. 115; *Doe* d. *Knight* v. *Smythe*, 4 M. & S. 347.

(*a*) *Doe* d. *Marriott* v. *Edwards*, 5 B. & Ad. 1065; *Walton* v. *Waterhouse*, 2 Wms. Saund. 420.

(*b*) *Doe* d. *Oliver* v. *Powell*, 1 A. & E. 531.

(*c*) *Doe* d. *Johnson* v. *Baytup*, 3 A. & E. 188; *Turner* v. *Doe* d. *Bennett*, 9 M. & W. 643 [Ex.Ch.]; *Crossley* v. *Dixon*, 10 H. L. C. 304.

(*d*) 37 & 38 Vict. c. 57, s. 1, replacing 3 & 4 Will. 4, c. 27, s. 2; *Brassington* v. *Llewellyn*, 27 L. J. Ex. 297. The owner of the legal estate must, however, be a party to the action (*Allen* v. *Woods*, 68 L. T. 143 [C. A.]).

Art. 133.

Exceptions. Disability.

(1) Where claimants are under disability, by reason of infancy, coverture, or unsound mind, they must bring their action within six years after such disability has ceased: provided that no action shall be brought after thirty years from the accrual of the right (*e*). But once the statute has begun to run against a party subsequent disability has no effect (*f*). But where the defendant has been guilty of some fraud or wrong and the plaintiff is unaware of the existence of his cause of action the period of limitation does not begin to run till the existence of his cause of action becomes known to the plaintiff (*g*).

Concealed fraud.

Acknowledgment of title.

(2) When any person in possession of lands or rents gives to the person, or the agent of the person entitled to such lands or rents, an acknowledgment, in writing and signed, of the latter's title, then the right of such last-mentioned person accrues at, and not before, the date at which such acknowledgment was made, and the statute begins to run as from that date (*h*).

Ecclesiastical corporations.

(3) The period in the case of ecclesiastical and eleemosynary corporations is sixty years (*i*).

ART. 134.—*Commencement of Period of Limitation.*

The right to maintain ejectment accrues, (a) in the case of an estate in possession, at the time of dispossession or discontinuance of possession of the profits or rents of lands, or of the death of the last rightful owner (*k*); and, (b) in respect of an estate in reversion or remainder or other future estate or interest, at the determination of the particular estate. But a reversioner

(*e*) 37 & 38 Vict. c. 57, ss. 3–5, replacing 3 & 4 Will. 4, c. 27, ss. 16, 17.

(*f*) *Rhodes* v. *Smethurst* (1840), 6 M. & W. 351.

(*g*) *Oelkers* v. *Ellis*, [1914] 2 K. B. 139.

(*h*) *Ley* v. *Peter*, 27 L. J. Ex. 239.

(*i*) 3 & 4 Will. 4, c. 27, s. 29.

(*k*) 3 & 4 Will. 4, c. 27, s. 3.

Art. 134.

or remainderman must bring his action within twelve years from the time when the owner of the particular estate was dispossessed, or within six years from the time when he himself becomes entitled to the possession, whichever of these periods may be the longer (*l*).

Discontinuance.

(1) Discontinuance does not mean mere abandonment, but rather an abandonment by one followed by actual possession by another (*m*). Therefore, in the case of mines, where they do not belong to the surface owner, the period cannot commence to run until someone actually works them; and even then it only commences to run *quâ* the vein actually worked (*n*).

Continual assertion of claim.

(2) No defendant is deemed to have been in possession of land merely from the fact of having entered upon it; and, on the other hand, a continual assertion of claim preserves no right of action (*o*). Therefore, a man must actually bring his action within the time limited; for mere assertion of his title will not preserve his right of action after adverse possession for the statutory period. As to what acts constitute dispossession, see *Littledale* v. *Liverpool College* (*p*).

(*l*) 37 & 38 Vict. c. 57, s. 2.

(*m*) See *Smith* v. *Lloyd*, 23 L. J. Ex. 194; *Cannon* v. *Rimington*, 12 C. B. 1.

(*n*) See *Low Moor Co.* v. *Stanley Coal Co.*, 34 L. T. 186, 187; *Ashton* v. *Stock*, 6 Ch. D. 726.

(*o*) 3 & 4 Will. 4, c. 27, ss. 10, 11.

(*p*) [1900] 1 Ch. 19 [C. A.].

CHAPTER XIV.

TRESPASS TO GOODS, DETENTION AND CONVERSION OF GOODS.

ART. 135.—*Definitions.*

THERE are three specific torts in respect of the possession of goods:

(i) *Trespass*, which consists in wrongfully taking goods out of the plaintiff's possession, or forcibly interfering with them whilst they are in his possession;

(ii) *Detention of goods or detinue*, which consists in wrongfully detaining from the plaintiff goods to the immediate possession of which he is entitled;

(iii) *Conversion*, which consists in the defendant's wrongfully converting to his own use goods to the possession of which the plaintiff is entitled, by taking them away (*a*), detaining them, destroying them, delivering them to a third person, or otherwise depriving the plaintiff of them.

NOTE.—The ancient causes of action for torts to goods were trespass and detinue. The action of "trover and conversion" was invented later, and was founded on the fiction that the defendant had found the plaintiff's goods and converted them to his own use.

The broad distinction between trespass on the one hand and conversion and detinue on the other hand, is that

(*a*) *Van Oppen & Co.* v. *Tredegars, Ltd.* (1921), 37 T. L. R. 504.

Art. 135. trespass is the only cause of action where the goods interfered with *remain in the possession* of the plaintiff; whereas an action for conversion or detention lies when the plaintiff is wrongfully deprived of the possession of his goods by the defendant.

Trespass.

Trespass may be the result of an intentional conscious act of taking or touching goods, or may be the result of mere negligence. So where A. drives his carriage so negligently that it collides with B.'s carriage, this is a trespass (*aa*), just as, if he collides with B.'s person, it would be trespass to the person. But it seems that there must be either intention or negligence, and a merely accidental touching does not constitute trespass (*b*).

The principal distinction between detention and conversion is in the remedy sought.

Detinue for return of goods.

When the defendant has got possession of the plaintiff's goods (whether wrongfully in the first instance, or by keeping them wrongfully after having lawfully obtained possession) the plaintiff can sue either for wrongful detention or for conversion, but generally an **action for detention** is brought where the defendant is at the time of action brought in wrongful possession of **specific goods,** such as a horse or a picture, which the plaintiff wishes to have returned to him.

Conversion for damages.

Conversion is the appropriate remedy where the plaintiff seeks merely **to recover as damages** the value of goods of which the defendant has deprived him. Thus, it is the proper remedy where the defendant no longer has possession of the goods, or where they cannot be identified, such as so many bushels of corn, or so much coal.

Actions for conversion or detention of goods are often brought to try title to goods, and, if the plaintiff proves his title, it is no defence that the defendant thought he himself had a good title. Thus, a person who buys A.'s goods from B. (thinking they are B.'s), and then, quite innocently, sells them to C., is guilty of a conversion, as

(*aa*) *Lotan* v. *Cross*, 2 Camp. 464.
(*b*) See *ante*, Art. 3.

also is C. if he refuses to give them up, or consumes them. **Art. 135.**

A trespass may be justified as being done in self-defence or in exercise of a right, or in other ways illustrated by the examples below. Justification.

(1) If one draws wine out of a cask and fills up the deficiency with water, he converts the whole cask. He converts the wine he draws out by taking it, and the remainder by turning it into something different, and so destroying it (*c*). Illustrations.

(2) So, again, if a sheriff sells more goods than are reasonably sufficient to satisfy a writ of *fieri facias*, he will be liable for a conversion of those in excess (*d*). Excessive execution.

(3) Beating the plaintiff's dogs is a trespass (*e*). Injuring animals.

(4) A wreck lying at the bottom of the sea outside territorial waters *is* capable of possession. To molest salvage operations on such a wreck is a trespass (*ee*). Interference with wrecks.

(5) The innocence of the trespasser's intentions is immaterial. Thus, where the sister-in-law of A., immediately after his death, removed some of his jewellery from a drawer in the room in which he had died to a cupboard in another room, in order to insure its safety, and the jewellery was subsequently stolen, it was held that the sister-in-law had been guilty of a trespass, and that it was no defence that she had removed the goods *bonâ fide* for their preservation, and she was consequently held liable for nominal damages. It was suggested, however, that if the removal was in fact reasonably necessary for their preservation and was carried out in a reasonable manner, that might have been a good defence (*f*). But, on the other hand, the finder of a lost chattel does not commit a tort by merely warehousing or otherwise safeguarding it for a reasonable Intention immaterial.

(*c*) *Richardson* v. *Atkinson*, 1 Stra. 576.
(*d*) *Aldred* v. *Constable*, 6 Q. B. 370, at p. 381.
(*e*) *Dand* v. *Sexton*, 3 Term Rep. 37.
(*ee*) *The Tubantia*, [1924] P. 78.
(*f*) *Kirk* v. *Gregory*, 1 Ex. D. 55.

Art. 135. time until the true owner be discovered, so long as he is not unnecessarily officious (*g*). However, the intention to deny the owner's right or to assert a right not consistent with that of the owner is proved where the goods are used or taken as his own property by the defendant (*h*).

(6) Again, where the owner of household furniture assigned it by bill of sale to the plaintiff, and subsequently employed the defendants (who were auctioneers) to sell it for her by auction, and they sold *and delivered possession* to the purchaser from them, they were held liable, although they knew nothing of the bill of sale (*i*). It is important, however, to note that the tort there was the *delivering* of the furniture to the purchaser, and not the mere selling of it (*j*).

Conversion by innocent purchaser.

(7) So the purchaser of a chattel takes it, as a general rule, subject to what may turn out to be defects in the title (*k*). Thus, in the leading case of *Hollins* v. *Fowler* (*l*), it was laid down that any person who, however innocently, obtains possession of the goods of a person who has been fraudulently deprived of them, and disposes of them, whether for his own benefit or that of any other person, is guilty of a conversion.

(8) Where, however, the true owner has parted with a chattel to A. upon an actual contract, though there may be circumstances which enable that owner to set the contract aside for fraud, yet a *bonâ fide* purchaser from A. will obtain an indefeasible title (*m*).

(*g*) See *per* BLACKBURN, J., in *Hollins* v. *Fowler*, L. R. 7 H. L. 757, at p. 766.

(*h*) *Lancashire and Yorkshire Rail. Co.* v. *MacNicoll* (1918), 88 L. J. K. B. 601.

(*i*) *Consolidated Co.* v. *Curtis & Son*, [1892] 1 Q. B. 495.

(*j*) See *Lancashire Wagon Co.* v. *Fitzhugh*, 6 H. & N. 502; and *per* BRETT, J., in *Fowler* v. *Hollins*, L. R. 7 Q. B. 616 [Ex. Ch.], at p. 627.

(*k*) Sale of Goods Act, 1893, s. 21, unless it be a negotiable security (as to which see *Glyn, Mills & Co.* v. *East and West India Dock Co.*, 7 App. Cas. 591, and Sale of Goods Act, 1893, s. 25 (2), or unless he buy it in market overt (Sale of Goods Act, 1893, s. 22), and not even then if it was stolen and the thief had been prosecuted to conviction (*ibid.*, s. 24).

(*l*) L. R. 7 H. L. 757.

(*m*) Sale of Goods Act, 1893, s. 23.

Art. 135.

Sale in market overt.

(9) To this rule, however, there is an exception, that a sale of goods in market overt gives a good title to the purchaser, although the seller has no title. So a purchaser in market overt cannot be sued in an action for conversion if he parts with the goods or refuses to give them up on demand. But this rule only protects the purchaser, and the *seller* in market overt is guilty of conversion by selling and delivering goods to which he has no title (*n*). The sale must be an open sale in a lawfully constituted market, and made according to the usages of the market. By special custom all shops in the City of London are market overt between sunrise and sunset for the sale of goods of the kind which by the trade of the owner are there put for sale by him. But the sale must be *by* the shopkeeper, not *to* him, and it must take place in the open part of the shop, not in a room at the back (*o*).

Revesting on prosecution of thief.

Of this common-law exception there is, however, a modification by statute, first enacted by 21 Hen. 8, c. 11, and now contained in s. 24 of the Sale of Goods Act, 1893, viz., that where goods are *stolen* and the thief is prosecuted to conviction, the property revests in the original owner, notwithstanding a sale in market overt. But note that until the *conviction* of the thief the property is in the person who has acquired it by sale in market overt, and no act of his before the conviction of the thief is a conversion. So, where the plaintiff's sheep were stolen and sold in market overt to the defendant, and the defendant then resold and delivered them to another, and subsequently the thief was prosecuted and convicted, though the property then revested in the plaintiff, he had no remedy against the defendant. For when the defendant sold the sheep they were his, not having then revested in the plaintiff (*p*).

Justification.

(10) It is a good justification that the trespass was the result of the plaintiff's own negligent or wrongful act. Thus, if he place his horse and cart so as to obstruct my

(*n*) *Peer* v. *Humphrey*, 2 A. & E. 495; *Ganley* v. *Ledwidge*, 14 L. R. Ir. 31 [C. A.].

(*o*) *Hargreave* v. *Spink*, [1892] 1 Q. B. 25; *Clayton* v. *Le Roy*, [1911] 2 K. B. 1031.

(*p*) *Horwood* v. *Smith*, 2 Term Rep. 750.

Art. 135.

right of way, I may remove it, and use, if necessary, force for that purpose (*q*).

Self-defence or defence of property.

(11) A trespass committed in self-defence, or defence of property, is justifiable. Thus, a dog chasing sheep or deer in a park, or rabbits in a warren, may be shot by the owner of the property in order to save them, but not otherwise (*r*). But a man cannot justify shooting a dog, on the ground that it was chasing animals *feræ naturæ* (*s*), unless it was chasing game in a preserve, in which case it seems that it may be shot in order to preserve the game, but not after the game are out of danger (*t*). So, too, though I may use reasonable force to remove trespassing animals from my land, I am liable in trespass if I use an unreasonable amount of force, as, for instance, by chasing trespassing sheep with a mastiff dog (*u*); but a man can justify trespass upon the property of another in order to extinguish a fire threatening his own property (*v*).

In exercise of right.

(12) A trespass committed in exercise of a man's own rights is justifiable. Thus, seizing goods of another, under a lawful distress for rent or damage feasant, is lawful.

Legal authority.

(13) Due process of law is a good justification, as, for example, an execution under a writ of *fieri facias* (*w*).

ART. 136.—*Possession necessary to maintain an Action for Trespass.*

(1) To maintain an action for *trespass* to goods, the plaintiff must at the time of the trespass have been in possession of the goods.

(2) Any possession however temporary is sufficient against a wrongdoer.

(3) Although he cannot maintain an action for trespass, the person entitled to the rever-

(*q*) *Slater* v. *Swann*, 2 Stra. 872.
(*r*) *Wells* v. *Head*, 4 C. & P. 568.
(*s*) *Vere* v. *Lord Cawdor*, 11 East, 568.
(*t*) *Read* v. *Edwards*, 34 L. J. C. P. 31.
(*u*) *King* v. *Rose*, 1 Freem. 347.
(*v*) *Cope* v. *Sharpe*, [1912] 1 K. B. 496 [C. A.].
(*w*) See *ante*, Art. 9.

sion of goods may maintain an action for any permanent injury done to them (*x*). Art. 136.

Possession.

To enable him to bring an action for trespass, the plaintiff need not have actual physical possession; it is enough if the goods are in the physical possession of a servant or other person who holds them for him. This kind of possession is sometimes called "**constructive possession.**" So, too, where goods are in a warehouse or in a ship, and the owner has the documents of title by means of which he can get actual possession, he may be said to have constructive possession. Another kind of possession is "**possession by relation.**" An administrator or executor has possession by relation from the moment of the death of the intestate or testator, for his title relates back to the death. And this possession by relation is enough to support an action against a wrongdoer, although at the time of the wrongful act the administrator or executor had neither title nor actual possession, nor the right to immediate possession (*y*).

Illustrations.

(1) A master of a ship, as bailee of the cargo, has actual possession, and can sue for trespass (*z*), as also can a person who has possession of another's cattle under a contract of agistment (*a*).

(2) Upon the same principle it has been held that the Postmaster-General, as bailee in possession of letters delivered to him for carriage, can recover their value in an action for negligence against a wrongdoer, even though he would not himself be liable to the owners for their loss (*b*).

(3) An owner of a chattel who has gratuitously lent it to another may maintain trespass, as it is considered to be in his possession, although the borrower has the physical possession. A loan does not, in contemplation of law, take the possession out of the owner (*c*).

(*x*) *Tancred* v. *Allgood*, 28 L. J. Ex. 362; *Lancashire Wagon Co.* v. *Fitzhugh*, 6 H. & N. 502; *Mears* v. *London and South Western Rail. Co.*, 11 C. B. (N.S.) 850.

(*y*) *Tharpe* v. *Stallwood*, 5 Man. & Gr. 760; and see *Kirk* v. *Gregory*, 1 Ex. D. 55.

(*z*) *Moore* v. *Robinson*, 2 B. & Ad. 817.

(*a*) *Rooth* v. *Wilson*, 1 B. & A. 59.

(*b*) *The Winkfield*, [1902] P. 42 [C. A.]; *G. N. Rail. Co.* v. *L. E. P. Transport*, [1922] 2 K. B., at p. 765.

(*c*) *Lotan* v. *Cross*, 2 Camp. 464.

Art. 137.

ART. 137.—*Trespassers* ab initio.

If one, taking a chattel by authority given him by law, abuses his authority, he renders himself a trespasser *ab initio* (*d*).

Thus, where the defendant took a horse as an estray, as he was authorised by law to do, and then worked the horse (which he had no authority to do), he became a trespasser *ab initio*. But the rule only applies where the original authority is given by law—not where it is given by the *parties*—and the abuse must be misfeasance, not mere nonfeasance (*e*).

ART. 138.—*Conversion and Detention.*

(1) To maintain an action for wrongful detention the plaintiff must, as against the defendant, be entitled to immediate possession at the time of action brought.

(2) To maintain an action for conversion the plaintiff must, as against the defendant, have been entitled to immediate possession at the time of the conversion.

(3) The judgment in an action for wrongful detention is for the return of the goods and damages for their detention.

(4) The judgment in an action for conversion is for damages. The measure of damages is the value of the goods at the time of the conversion.

Comment.

The plaintiff need only show that he is entitled as against the defendant. He need not show a good title to the goods as against everyone: and as possession is always a good title against a wrongdoer, it is sufficient if the plaintiff shows that he had possession and the defendant has taken them out of his possession. In these actions the

(*d*) *Oxley* v. *Watts*, 1 Term Rep. 12; *Harvey* v. *Pocock* (1843), 11 M. & W. 43, approved *Canadian Pacific Wine Co.* v. *Tully*, [1921] 2 A. C. 417.

(*e*) *Ibid.*

plaintiff is not required to show that the defendant did not act in good faith (*f*). **Art. 138.**

Judgment.

In an action for wrongful detention the plaintiff gets judgment for the return of the specific goods detained or (if the plaintiff prefers) their value, and the court may order that execution shall ensue for the return of the property itself; accordingly, in this form of action, the goods must be specific ascertained goods. The plaintiff may also have damages for the detention of the goods.

In an action for conversion the judgment is for damages only, and if the defendant **satisfies the judgment,** he thereby pays for the goods, and they thereupon vest in him as if he had bought them (*g*).

Proof of conversion or detention.

A conversion or detention is commonly proved by *demand and refusal*. If the defendant has the plaintiff's goods in his possession, this is not necessarily in itself a conversion or wrongful detention. If, however, he treats them as his own, as by delivering them to a third person or consuming them, he thereby converts them to his own use. Where there is nothing else in the nature of a conversion, the plaintiff should demand their return, and if the defendant refuses to return them, his refusal is evidence of a conversion. It is also evidence of wrongful detention, and the plaintiff may then bring his action and will succeed, unless the defendant can justify his refusal to return the goods on demand (*h*).

Agency of necessity.

It is a good defence in an action for conversion of goods for the defendant to plead that he was "an agent of necessity": he must establish an actual and definite commercial necessity for the sale of the goods, and he must show that he acted *bonâ fide*.

"Agency of necessity" is not confined to a carrier or to an acceptor of a bill of exchange (*hh*).

(*f*) *Pridgeon* v. *Mellor* (1912), 28 T. L. R. 261.

(*g*) *Cooper* v. *Shepherd*, 3 C. B. 266. But judgment without satisfaction does not change the property in the goods (*Brinsmead* v. *Harrison*, L. R. 6 C. P. 584); and see *Eastern Construction Co., Limited* v. *National Trust Co., Limited*, [1914] A. C. 197.

(*h*) See *Miller* v. *Dell*, [1891] 1 Q. B. 468 [C. A.]; *Clayton* v. *Le Roy*, [1911] 2 K. B. 1031.

(*hh*) *Prager* v. *Blatspiel Stamp & Heacock*, [1924] 1 K. B. 566.

Art. 138.

Illustrations.

Possession of bailee.

(1) If a hirer or carrier of my goods wrongfully delivers them to a third person, the bailment is thereby determined, and the immediate right of possession at once revests in me, so that I can sue in conversion either the bailee or the person to whom he has delivered them (*i*).

Pledge.

(2) But where goods are pledged, no action for conversion or detention will lie against the pledgee for selling them or repledging them until tender of the debt has been made and refused (*j*).

Sale of property under lien.

(3) And so, when, by a sale of goods, the property in them has passed to the purchaser, subject to a mere lien for the price, the vendor will be liable for conversion if he resells and delivers them to another. But in such a case the plaintiff will only be entitled to recover the value of the goods, less the sum for which the defendant had a lien upon them (*k*).

Possession of trustee.

(4) A trustee, having the legal property, may sue in respect of goods, although the actual possession may be in his *cestui que trust*, for he has in law the right to immediate possession (*l*).

Possession of a mere finder.

(5) In the leading case of *Armory* v. *Delamirie* (*m*), it was held that the finder of a jewel could maintain an action against a jeweller to whom he had shown it, with the intention of selling it, and who had refused to return it to him ; for his possession gave him a good title against all the world except the true owner. In short, a defendant cannot set up a *jus tertii* against a person in actual possession.

(6) But the finder of lost goods has no title against anyone who can show a better title. So, where a workman found a ring embedded in mud on land which was in the possession of the plaintiffs, it was held that, as finder, he acquired no title against them. The plaintiffs being in

(*i*) *Cooper* v. *Willomatt*, 1 C. B. 672 ; *Wyld* v. *Pickford*, 8 M. & W. 443.

(*j*) *Donald* v. *Suckling*, L. R. 1 Q. B. 585 ; *Halliday* v. *Holgate*, L. R. 3 Ex. 299 [Ex. Ch.].

(*k*) *Page* v. *Cowasjee Eduljee*, L. R. 1 P. C. 127 ; *Martindale* v. *Smith*, 1 Q. B. 389.

(*l*) *Barker* v. *Furlong*, [1891] 2 Ch. 172.

(*m*) 1 Sm. L. C. 356.

possession of the land, were in possession of the ring also. Consequently, the finder was liable to them in an action for detention when he refused to give it up to them (*n*). Art. 138.

(7) A bailee of goods may maintain trespass or conversion against a wrongdoer, by virtue of his having the actual possession. So also may the bailor as he is in possession by the bailee. Thus, when an article is lent the borrower or the lender may bring an action against a wrongdoer (*o*). So also may the owner of goods let on hire (*p*), and the pledgee of goods pawned (*q*). The bailee, if he succeeds in an action of conversion, recovers the full value of the goods as damages (*r*). It would seem that satisfaction of the bailee does not preclude the right of the bailor unless the bailee acknowledges the right of the bailor to be indemnified.

ART. 139.—*Waiver of Tort.*

When a conversion consists of a wrongful sale of goods, the owner of them may elect to waive the tort, and sue the defendant for the price which he obtained for them, as money received by the defendant for the use of the plaintiff (*s*). But, by waiving the tort, the plaintiff estops himself from recovering any damages for it (*t*).

Once having elected to treat the transaction as a sale, as by receiving or suing for part of the purchase-money, the plaintiff cannot afterwards sue in tort. If an action for money had and received is brought, that is a conclusive election to waive the tort; and so the bringing of an action

(*n*) *South Staffordshire Water Co.* v. *Sharman*, [1896] 2 Q. B. 44.

(*o*) *Nicolls* v. *Bastard*, 2 C. M. & R. 659; *Burton* v. *Hughes*, 2 Bing. 173.

(*p*) *Cooper* v. *Willomatt*, 1 C. B. 672.

(*q*) *Swire* v. *Leach*, 18 C. B. (N.S.) 479.

(*r*) See *The Winkfield*, [1902] P. 42 [C. A.], where the principles and cases are fully discussed; *G. N. Rail. Co.* v. *L. E. P. Transport and Depository, Ltd.*, [1922] 2 K. B. 742.

(*s*) *Lamine* v. *Dorrell*, 2 Ld. Raym. 1216; *Oughton* v. *Seppings*, 1 B. & Ad. 241; *Notley* v. *Buck*, 8 B. & C. 160.

(*t*) *Brewer* v. *Sparrow*, 7 B. & C. 310.

Art. 139. of conversion or trespass is a conclusive election not to waive the tort. These are conclusions of law (*u*). In other cases it is a question of fact whether or not there has been an election; and if the facts show an intention to retain the remedy in tort against one tort-feasor, a settlement with another one will not affect that right, although the plaintiff may have sued alternately both in tort and for money had and received, and although he may have got an interim injunction restraining any dealings with the money (*x*).

ART. 140.—*Trespass and Conversion by Joint Owners.*

A joint owner can only maintain trespass or conversion against his co-owner when the latter has done some act inconsistent with the joint ownership of the plaintiff (*y*).

(1) Thus, a complete destruction of the goods would be sufficient to sustain an action, for the plaintiff's interest must necessarily be injured thereby (*z*).

(2) But a mere sale of them by one joint owner would not, in general, be a conversion, for he could only sell his share in them. But if he sold them in *market overt*, so as to vest the whole property in the purchaser, it would be a conversion (*a*).

ART. 141.—*Remedy by Recaption.*

When anyone has been unlawfully deprived of his goods, he may lawfully reclaim and take them wherever he happens to find them, but

(*u*) *Smith* v. *Baker*, L. R. 8 C. P. 350.

(*x*) *Rice* v. *Reed*, [1900] 1 Q. B. 54 [C. A.].

(*y*) 2 Wms. Saund. 47 o; and see *Jacobs* v. *Seward*, L. R. 5 H. L. 464.

(*z*) *Barnardiston* v. *Chapman*, cited 4 East, 121.

(*a*) *Mayhew* v. *Herrick*, 7 C. B. 229.

not in a riotous manner or attended with breach of the peace, although he can justify an assault made for the purpose of recapturing after demand and refusal (*b*). Art. 141.

Art. 142.—*Remedy by Action of Replevin.*

The owner of *goods distrained* is entitled to have them returned upon giving such security as the law requires to prosecute his suit without delay against the distrainer, and to return the goods if a return should be awarded (*c*).

The application for the replevying or return of the goods is made to the registrar of the county court of the district where the distress was made, who thereupon causes them to be replevied to the person from whom they were seized, on his giving sufficient security. The action must be commenced within one month in the county court, or within one week in one of the superior courts; but if the plaintiff intends to take the latter course, it is also made a condition of the replevin bond that the rent or damage, in respect of which the distress was made, exceeds £20, or else that he has good grounds for believing that the title to some corporeal or incorporeal hereditaments, or to some toll, market, fair, or franchise, is in dispute (*d*).

(*b*) *Blades* v. *Higgs* (1865), 11 H. L. C. 621.

(*c*) See County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 134–137.

(*d*) 51 & 52 Vict. c. 43, ss. 133–136.

INDEX.

A.

ABATEMENT
of action. *See* DEATH.
nuisance, 239.
cutting overhanging trees, 240.
not proper remedy to prevent prospective nuisance, 240.
pulling down buildings, 240.
inhabited house, 240.

ABROAD,
liability for torts committed, 39 *et seq.*

ABSOLUTE RIGHT,
infringement of, without damage, constitutes a tort, 5.

ACCIDENT,
actionable, if preventable, 8.
if inevitable, not actionable, 8.
And see NEGLIGENCE ; NUISANCE.
when occurrence of, *primâ facie* evidence of negligence, 183–4.

ACT OF GOD
excuses what would be otherwise actionable, 189 *et seq.*

ACT OF STATE,
no action can be brought for damage resulting from, 16.
whether between two independent states or between a state and an individual foreigner, 16.
what is, 16, 17.

ACT OF THIRD PARTY,
where damage partly caused by, 192 *et seq.*

ADOPTION. *See* RATIFICATION.

ADVERTISEMENTS,
criticism of, privileged, 119.

ADVICE,
confidential, a privileged communication, 125.

AGENTS
cannot shelter themselves behind their principals, 52.
general liability of principal for torts of, 52 *et seq.*
act must be within scope of employment, 57 *et seq.*
where agent expressly employed to commit tort, 52.
no liability in general for collateral negligence of agent, 62.
unless he is a servant, 54 *et seq.*
who is a servant, 54 *et seq.*
wilful acts of servants, 54.
arrests by, 58.
assaults by, 59.
ratification of torts of, 53.
And see MASTER AND SERVANT.

AGGRAVATION. *See* DAMAGES.

AGISTMENT,
both contract and bailment, 34.
duty and liability of agister, 198, 199.

AIR,
when action lies for obstruction of, 248.

ALIEN ENEMY
cannot sue, 41.
licence from Crown to sue, 42.

AMBASSADORS
not liable for torts, 43.
but may waive privilege, 43.

ANIMALS. *See* FEROCIOUS ANIMALS.
damage by, 194 *et seq.*
bulls, 197.
dog "accustomed to bite mankind," 197.
biting and worrying sheep, 197.
domestic animals, trespass by, 198.
highway, straying from, 198.
on, 198.
if dangerous, kept with knowledge, kept at peril, 195, 196.
in suing for damages caused by dangerous, *scienter* must be proved, 196, 197.
liability of persons keeping elephants, bears, and monkeys, 195.
wild and vicious, 195.
mare, 34.
owner of vicious dog liable for servant's wrongful act, 195–6.
persons keeping dog or other domestic, no liability of, 195.
servant's knowledge that dog is dangerous, 197.
trespasser bitten by horse, occupier of land not liable, 199.
injuries done to, 34, 288.
killing in self-defence, justifiable, 288.
trespasses of, 198, 199, 271.

ARBITRATOR,
immunity of, 18.

ARREST. *See* IMPRISONMENT.

ARTIFICIAL WATERCOURSE. *See* WATERCOURSE.

ASSAULT AND BATTERY,
amount of damages, 270.
aggravation and mitigation, 81, 82.
definition of assault, 256.
ability to do harm necessary, 256.
attempt necessary, 256, 257.
committed in sport, not actionable, 257.
menacing, 256.
definition of battery, 257.
battery voluntarily suffered, not actionable, 257.
caused by inevitable accident, excusable, 258.
committed in mere retaliation, not justifiable, 261.
defence of property, 261.
injuries inflicted through defective tramway, 258.
in order to arrest night offender, felon, malicious trespasser, or vagrant, 268, 269, 270.
in order to expel disturber of congregation, justifiable, 269.
in order to stop breach of the peace, 267 *et seq.*
by naval or military officers, 262.
justification for, 260 *et seq.*
may be occasioned by anything wrongly and wilfully or negligently set in motion by defendant, 257.
mayhem, 257.
of pupil or child for sake of correction, 262.
self-defence, justifiable, 260 *et seq.*
in exercise of authority under Lunacy Acts, 262.
on person having ticket for grand stand and enclosure at races, 261.
refusing to leave after being requested to, 261.
proceedings before justices release civil proceedings, 269 *et seq.*
responsibility of master for, by servant, 59.

B.

BAILEE. *See* TRESPASS.

BAILEES OF GOODS,
common carriers, meaning of, 173.
conversion by, 290 *et seq.*
duty of, 173.
degree of care required, varies with nature of the bailment, 173, 174.
to take reasonable care of goods bailed to them, 173, 174.
liability of, 173.

BAILOR
may bring trespass against third party or purchaser, where bailee has wrongfully delivered or sold goods, 289 *et seq.*
unless sale in market overt, 287.
and even then if goods stolen and thief convicted, 287.

BANKRUPTCY,
effect of, on the right to sue or the liability to be sued for tort, 68–9.

BATTERY. *See* ASSAULT AND BATTERY.

BODILY INJURIES. *See* ASSAULT.
caused by false imprisonment. *See* IMPRISONMENT.
negligence. *See* NEGLIGENCE.
nuisances. *See* NUISANCE.

BOOKS,
libels contained in, 116.

BREACH OF DUTY
created for benefit of public, 28.
escape of water accumulated by natural causes, not a, 193.
falling on land, is not a, 193.
liability for, to prevent damage from dangerous things and animals, 189 *et seq.*
planting yew trees and thistles, when a, 194.
supply pipes bursting, not a, if not for defendant's own use, 193.
third party bringing thing on land, defendant not liable for, 192.
water stored in a tank is not a, 192.
when caused by act of God, 192.

BRICK-BURNING
may be an actionable nuisance, 232, 233.

C.

CABDRIVER,
who liable for negligence of, 56.

CAMPBELL'S (LORD) ACT, 69 *et seq.*
action can only be maintained in cases where deceased himself could have sued had he lived, 71.
action not maintainable when deceased received compensation before death, 73.
effect of deceased having insured his life, 73.
gives right of action to relatives of persons killed through another's default, 69 *et seq.*
if servant injured but not killed, master may bring action for loss of services, 70–71.
jury must apportion damages, 70.
master cannot bring action for damages which cause the immediate death of his servant, 71.

CAMPBELL'S (LORD) ACT, 69 *et seq.*—*continued.*
plaintiff must have suffered some pecuniary loss attributable to the relationship, 72.
what damage must be proved, 72.
when action maintainable, 71.
for whose benefit maintainable, 71.
when assessing damages insurance not to be taken into account, 73.
who may sue, 70.
in case executor does not, 70.

CANDIDATE
for office, character of, privileged communication, 126.

CATTLE OR SHEEP. *See* TRESPASS.
when injury is done to, by dog, *scienter* need not be shown, 197.
word "cattle" includes horses, 197.

CAVEAT EMPTOR, 157 *et seq.*

CHARACTER,
evidence of plaintiff's bad or irritating character or conduct in mitigation of damages in defamation, 82.
daughter's loose character in mitigation of damages in seduction, 82.
of candidate for office, given to a voter or elector, a privileged communication, 126.
servant, when a privileged communication, 125.

CHATTELS,
trespass to, and conversion of, 283 *et seq.*
See TRESPASS; *and see* WRONGFUL CONVERSION.

CHILDREN
of deceased parent, action by. *See* CAMPBELL'S (LORD) ACT.

CHURCH BELLS,
injunction to restrain ringing of, 87.

CLERGYMAN,
imputing unchastity to a beneficed, is actionable *per se*, 110.

COERCION
by illegal means, 149 *et seq.*

COLLISION
due to negligence, 14.

COMMON EMPLOYMENT,
meaning of, 204 *et seq.*
See MASTER AND SERVANT.
there must be a common master, 207.

COMPENSATION. *See* WORKMEN'S COMPENSATION.

CONCEALMENT,
when fraudulent. *See* FRAUDULENT CONCEALMENT.

CONDUCT,
evidence of plaintiff's objectionable, in mitigation or aggravation of damages, 81 *et seq.*

CONFIDENCE. *See* MISFEASANCE.

CONSEQUENTIAL DAMAGES. *See* DAMAGES.

CONSPIRACY, 153.
not actionable where object is to induce persons not to employ defendant, 151 *et seq.*
aliter where object is to induce persons to break contract, 149, 150.
what constitutes, 153.

CONSTABLE
cannot, in general, arrest without a warrant, 268.
definition of, 266.
may arrest without warrant—
for acts of vagrancy, 269.
brawling in church, 269.
breach of peace, even after affray over, in order to take offender before a justice, 267.
malicious injuries, 268.
on reasonable suspicion of felony, 265.
power of, to arrest in obedience to warrant, 265.
special protection of, in executing warrants of justices without jurisdiction, 265.

CONSULAR COURTS,
immunity of, 18.

CONTINUING TORTS,
commencement of period of limitation in, 95.
fresh action may be brought for, until they are stopped, 95 *et seq.*

CONTRACT,
gratuitous bailees, 37 *et seq.*
in performance of duties undertaken gratuitously, 37.
negligence of professional men, 35.
servant can sue railway company who have booked him although master paid the fare, 35.
third party injured, as to deleterious quack medicines, 35.
aliter where fraud, 36.
torts connected with, 33 *et seq.*
who may be sued for torts connected with, 34 *et seq.*

CONTRACTOR,
employer not in general liable for nuisance committed by, or negligence of, 62 *et seq.*
exceptions, 64–66.

CONTRIBUTION,
how far a right to, between tort-feasors, 46, 47.

CONTRIBUTORY NEGLIGENCE. *See* NEGLIGENCE.

CONVERSION. *See* WRONGFUL CONVERSION.

CORPORATION
is generally liable for torts, 43.
liability of directors for torts of, 45.
liable for libels and slanders published by its servants, 60.
torts, 45.
even for those depending on fraud, 45.
including malicious prosecution, 45, 137.
may sue for a tort unless it merely affects its reputation, 41.

COUNSEL,
opinion of, no excuse for malicious prosecution, 135.
statements of, privileged communications, 121.

CRIME. *See* DEFAMATION.

CRITICISM. *See* DEFAMATION.

CROWN,
Public Authorities Protection Act, 1893, applies to servants of, 97.

D.

DAMAGE
continuing, under Public Authorities Protection Act, 1893, 97.
remoteness of, 13 *et seq.*
special, must be some temporal loss, 108.
when necessary, 5 *et seq.*
without wrongful act, not actionable, 5 *et seq.*

DAMAGE BY ANIMALS. *See* ANIMALS.

DAMAGES,
in lieu of injunction, 86, 87.
measure of, in actions of tort, 75 *et seq.*
(1) *For injuries to person and reputation,* 75 *et seq.*
aggravation and mitigation of, 81 *et seq.*
for defamation, 82.
seduction, 81, 82.
consequential damages, 79.
injury to trade by defamation, 80.
loss of business, 79.
mental shock, 79.
excessive, 75.
for assault, 76.
false imprisonment, 76.
seduction, 147, 148.

DAMAGES—*continued.*
(1) *For injuries to person and reputation—continued.*
insurance not to be taken into account, 83.
mistake or ill-feeling of jury, 75.
prospective damages may be given, 80, 81.
too small, 75.
under Employers' Liability Act, 209.
(2) *For injuries to property,* 76 *et seq.*
aggravation and mitigation, 81 *et seq.*
insolent trespass, 82.
compensatory in character, 76.
consequential damages, 79.
collisions at sea, 78.
continuing torts, 80.
cost of repairing chattel, 78.
for wrongful conversion, 77.
joint wrongdoers are jointly and severally liable for, 46.
loss of use of chattel by reason of defendant's negligence, 78.
lightship, having been damaged by collision, 78.
presumption of amount of damage against a wrongdoer, 78.
prospective damages should be included, 81, 82.
aliter where tort is continuing, 80, 81.
or where distinct torts, one to person and the other to property, 80.
trespass to land, 77.

DAMNUM,
definition of, 4, 5.

DAMNUM ABSQUE INJURIÂ, 5.

DANGER,
duty to disclose, in gratuitous loans, 38.
trespass under the influence of a pressing, 272.

DANGEROUS
animals. *See* FEROCIOUS ANIMALS.
subject-matter of contract, duty to warn third persons, 35.
substances brought on to land must be kept at peril of bringer, 189 *et seq.*
works, principal liable for contractor's defaults, 62.

DAUGHTER,
action for seduction of, 144.
See SEDUCTION.

DEATH,
effect of, on the right to sue or liability to be sued for tort, 67–68.

DECEASED PERSON. *See* CAMPBELL'S (LORD) ACT.

DECEIT, 157 *et seq.*
See FRAUD.

DEFAMATION, 101 *et seq.*
actual damage, when necessary, in slander, 106 *et seq.*
damage caused by plaintiff himself repeating the slander, 108.
imputation—
mere suspicion insufficient, 110.
must be of punishable crime, 109.
of crime actual damage of itself, 109.
impossible crime insufficient, 109.
mere breach of trust, 109.
unchastity, 108.
unfitness for business, 110.
office, 111.
society, 110.
analysis of slander, 102.
damages. *See* DAMAGES.
definition, 101.
disparagement of tradesman's goods gives no cause of action, 110.
fair comment, 117 *et seq.*
criticism of literary work, 118, 119.
matter of public interest, 117.
public men, 119 *et seq.*
tradesmen's advertisements, 118.
decision of court as to whether—
evidence that any part of words complained of, go beyond limit of, 117, 118.
matter commented on is of public interest, 117.
defence of, 118.
duty of jury to prove evidence not of, 117.
effect of rolled-up plea, 117, 118.
in, no question of malice arises, 119.
is outside the region of libel, 119.
must be distinguished from privilege, 119.
not actionable if defendant proves *bonâ fides*, 117.
on public conduct of a public man, 117, 119.
functions of court and jury as to publication, 113.
liability of innocent disseminators, 114 *et seq.*
justification, 116 *et seq.*
effect of plea of, 117, 118.
may aggravate damages, 82.
malice, 124.
oral or written, 101.
privileged communications—
extracts from Parliamentary papers, 127.
function of court and jury, 122.
incidental publication to persons not having interest, 126.
judicial proceedings, 121, 122.
jury to decide whether communication fairly warranted, 123.
official despatches and reports, 121.

DEFAMATION—*continued.*
privileged communications—*continued.*
Parliamentary proceedings, 121.
reports of judicial proceedings, 127.
includes charge to Grand Jury, 127.
legal proceedings, 122.
quasi-judicial proceedings, 127.
sending by telegram or postcard or in wrongly addressed envelope, 126.
speeches at county and district councils, 128.
statement made to a person having a corresponding interest, 125.
aliter where made broadcast, 126.
where character of a candidate is, 126.
servant given to intending employer, confidential advice, 125. 125.
social and moral duty to speak, 124, 125.
warning a guest of character of person in his employ, publication, 113. 125.
by dictating to clerk, 114.
telegram or postcard addressed to person libelled, 113.
justification of, 102.
libel or slander must refer to the plaintiff, 111.
to or by husband or wife, 114.
repetition of defamation, 114.
in slander where the damage is wholly in consequence of the repetition, 115.
injunction to restrain, 88.
printing of oral slander, 115.
slander of title and slander of goods, 129.
may be in writing or in print, 129.
puffing one's own goods, 130.
special damage, 130.
what is, 129.
truth of defamatory statement a good defence, 116.
waxen effigy, 106.
when a corporation may sue, 106.
where no disparagement no amount of damage will give a cause of action, 106.
words capable of bearing a defamatory meaning, 105.
DEFAMATORY ARTICLE,
publication of, 114.
liability of publishers, 116.
DEFECT. *See* FRAUD.
DEFENCE. *See* ASSAULT.
DETINUE,
meaning of, 283.
DISABILITY
to sue or to be sued for tort, 41 *et seq.*
See LIMITATION.

DISPOSSESSION,
damages for, 278.
definition of, 278.
jus tertii available to defendant, but not to plaintiff, 278.
landlord claimant need not prove his title, 279.
licensor and licensee, 279.
limitation, 279.
acknowledgment of title, 280.
commencement of period, 280.
concealed fraud, 280.
disability, 280.
discontinuance of possession, 281.
ecclesiastical corporations, 280.
mere entry and continual assertion of claim no bar to running of statute, 281.
master and servant, 279.
mere possession evidence of title for defendant, 278.
plaintiff must rely on strength of his own title, 278.
plaintiff's title need not be indefeasible, 278.
tenant may show expiration of landlord's title, 279.

DOGS,
killing in defence of game, when justifiable, 288.
sheep or cattle, 288.
self-defence, 288.
liability of owner for injuries by. *See* FEROCIOUS ANIMALS.
noisy, a nuisance, 231.

E.

EASEMENT,
grantee of, may enter upon servient tenement in order to repair, 272.
what is an, 241. *And see* NUISANCE.

EJECTMENT. *See* DISPOSSESSION.

EMPLOYERS' LIABILITY ACT, 209–211.
class of servant to which the Act applies, 211.

ENGINES
near highway. *See* NUISANCE.

EXECUTIVE OFFICERS,
general immunity of, 19.

F.

FALSE IMPRISONMENT, 258 *et seq.*
See IMPRISONMENT.

FALSE REPRESENTATION. *See* FRAUD.

FELLOW-SERVANTS. *See* MASTER AND SERVANT.

FELONY,
how suspension may be effected, 24 *et seq.*
remedy by action for, proceedings by husband of injured party, 25.
suspended until criminal trial ended, 24.
where charged as misdemeanor, 25.

FENCES,
liability for injuries caused by dangerous, 221.
non-liability for trespass of cattle if adjoining owner bound to keep in repair, 272.

FEROCIOUS ANIMALS,
liability for injuries caused by, 194 *et seq.*
liability under contract of agistment, 34.
scienter the gist of the action for, 196 *et seq.*
presumption of *scienter*, 197.
proof of *scienter*, 197, 198.
scienter when sheep or cattle worried by dog need not be proved, 197.
See also ANIMALS.

FIRE
accidentally arising, 199.
damage by, 199 *et seq.*
liability of railway companies, 22, 200, 201.
persons intentionally lighting, must see that it does no harm, 199.
negligently allowing, to arise, liable for damage to neighbour's land, 199.
preventing from doing mischief, 199 *et seq.*
under Railway Fires Act, 1905, 201.
accidental, not checked by servant—negligence, 200.

FIREWORKS
near highway. *See* NUISANCE.

FLOODS,
liability for, 189 *et seq.*
where damage from is partly attributable to *vis major*, 191.
attributable to act of third party, 192.

FOREIGN COUNTRY,
torts committed in, when actionable in England, 39 *et seq.*

FOREIGN SOVEREIGNS
not liable for torts, 43.
but may waive the privilege, 43.

FRAUD, 157 *et seq.*
definition of, 157 *et seq.*
essentials of actionable, 157.

FRAUD—*continued.*
fraud followed by damage gives rise to action for deceit, 157.
fraudulent character must be in writing to be actionable, 160.
liability for fraud of agent, 159.
honest misstatement by agent does not render principal liable, 159.
of directors and promoters of companies, 160.
prospectus issued in honest belief of its truth, 161.
statutory duty as to, 161.
mere silence not sufficient to give rise to action for deceit, 157.
negligent misrepresentation not the same as fraudulent misrepresentation, 158.
when actionable, 157 *et seq.*
actual damage essential, 157.
false representation of soundness of a dangerous instrument, 159.
not necessary that fraudulent statement should have been made to plaintiff, if intended to be acted on by him, 158.
silence amounts to, 157.
where deceit and malice present, it is immaterial that there was no intention by defendant to reap any benefit, 159.
lying practical joke, 159.
principal intentionally keeps agent ignorant of a fact, causing misrepresentation, principal liable for, 160.

FRAUDULENT CONCEALMENT,
mere abstinence from mentioning a known defect is not actionable as a tort, 157.

G.

GAME,
killing dog in order to preserve, when justifiable, 288.

GOODS. *See* NEGLIGENCE; TRESPASS; WRONGFUL CONVERSION.

GOVERNMENT DEPARTMENTS,
heads of, not liable for torts of their subordinates, 61.
masters of Government servants, 61.

GRATUITOUS DUTIES,
when misfeasance in performance of, gives rise to an action, 37.

GRATUITOUS LOAN,
duty to disclose danger, 38.

GUN,
accidents caused by, without negligence, 10.
injury to third party by explosion of a, warranted, 159.

H.

HIGHWAY,
authorities liable for damage resulting from misfeasance, 30.
not liable for damages resulting from nonfeasance, 29.
dedication of, to public not a grant of the land, 275.
manhole put in, 31.
obstruction of, 220.
trespass may be maintained by grantor of, for unreasonable use of, *e.g.*, obstructing his right of sporting, 271, 272.

HOME SECRETARY,
immunity of, 20.

HORSE,
accident caused by a runaway, when excusable and when not, 9.
injuries to, by dog, 197.
by mare, 199.

HOUSE,
liability for ruinous state of. *See* NUISANCE.

HUSBAND
liable for torts of wife, 49.
unless arising from her contract, 49.
liability ceases if wife dies or marriage dissolved, 49, 50.
judicially separated, 50.
not entitled to imprison his wife, 262.
or to sue her for tort, 41.

I.

IMMORALITY. *See* DEFAMATION.

IMPRISONMENT,
by judges and magistrates, absolute immunity of judges of superior courts for, 17 *et seq.*
officers, 262.
parents, 262.
private persons and constables, 265–269.
arrest of—
breakers of the peace, 267.
interrupters of divine service, 269.
malicious injurers, 268.
night offenders, 268.
suspected felons, when justifiable, 265, 266.
what suspicion sufficient, 266.
vagrants, 269.
acts of vagrancy, 269.
wife by husband, 262.
damages for, 270.
habeas corpus, 259, 260.

IMPRISONMENT—*continued.*
imprisonment by justices of the peace for breach of the peace, 264.
judicial authority, justification by, 262, 263.
distinction between false imprisonment and malicious prosecution, 263.
signing a charge sheet is not sufficient evidence, 264.
moral restraint constitutes, 259.
total restraint necessary, 259.
what constitutes, 258.
when not justified, 262.

INCORPOREAL HEREDITAMENT,
injury to. *See* LIGHT AND AIR; SUPPORT; WATERCOURSE; WAY.

INEVITABLE ACCIDENT. *See* ACCIDENT.

INFANT,
generally liable for his torts, 44 *et seq.*
aliter if founded on contract, 44.
unborn, may claim damages under Lord Campbell's Act if father killed by negligence, 42.

INJUNCTION,
cases where damages given instead, 86, 87.
church bells, 87.
general rule as to granting of an, 85 *et seq.*
granted even where it will inconvenience public, 89.
injuries remediable by, 85 *et seq.*
interlocutory or perpetual, 85 *et seq.*
rarely granted to restrain a libel, 87, 88.
mandatory, 85, *note* (*b*).
noise, for, 87.
not granted against trade union, 43.
noxious fumes, for, 87.
obstruction of light, 88.
pollution of lake, 87.
remedy by, 85 *et seq.*
when granted to restrain libel, 87 *et seq.*

INJURIA,
meaning of, 4.

INSANITY,
imputation of. *See* DEFAMATION.

INSOLVENCY,
imputation of. *See* DEFAMATION.

INTENTION,
not always material in torts, 8 *et seq.*

INTIMIDATION,
when actionable, 149 *et seq.*

INVOLUNTARY TORTS,
when actionable, 9, 10.

J

JOINT OWNERS,
trespasses of, towards each other, 276.

JOINT TORT-FEASORS,
liability of, 46 *et seq.*
only one cause of action, 47.
what rights of contribution between, 47.
when partner commits a tort in regard to any third person, 47.

JUDGE,
powers of, to imprison. *See* IMPRISONMENT.
statement of, absolutely privileged communications, 121.

JUDICIAL OFFICERS,
general immunity of, 17.

JUDICIAL PROCEEDINGS,
how far privileged communications, 120, 121.

JURISDICTION,
torts committed at sea, 39.
outside, 39.

JUS TERTII,
defendant in ejectment may set up, but not claimant, 278.

JUSTICE OF THE PEACE. *See* IMPRISONMENT.

JUSTIFICATION. *See* ASSAULT; DEFAMATION; IMPRISONMENT; TRESPASS.

L.

LANDLORD,
title of, cannot be disputed by tenant, 279.
when liable for nuisance on demised premises, 224.

LIBEL. *See* DEFAMATION; INJUNCTION.

LIBRARY,
liability for disseminating libels, 116.

LICENSEE,
possession of, is the possession of the licensor, 279.

LIEN,
sale of goods held under, a wrongful conversion, 292.

LIGHT AND AIR,
implied grants of light, 246.
a man cannot obstruct on property granted by him to another, 246, 247.
in general no right to air can be gained, 247.
aliter for access of air through defined openings or passages, 247.
no right to, *ex jure naturæ*, 246.
right to, can only be by prescription, grant, or reservation, 246.
rights to light gained by prescription, 246.
interruptions sufficient to rebut prescription, 248.
no interruption allowed after nineteen years, 248.
but injunction not granted until full twenty years, 248.
what amount of damage necessary to support action, 247–249.
where the right arises by express grant, depends on construction of the grant, 249.
where the right arises by implied grant or prescription the sole question is whether the deprivation amounts to a nuisance, 249.

LIMITATION,
commencement of period of, 92.
commencement of period when tort continuing, 95.
concealed fraud, 92.
conversion, 94.
disability, 96.
arising subsequently to commencement of period, 96.
in the case of nuisance, 96.
taking away support of land, 93.
when tort consists of actual damage, commencement of period of, 92.
great distinction between real property limitation Acts and those relating to chattels, 95.
in particular cases. *See* under the several headings of those cases.
of actions of tort, 91.
reasons for, 93.
under Employers' Liability Act, 211.
Public Authorities Protection Act, 1893, 96.

LOCAL AUTHORITY,
breach of duty by, 28.

LOSS OF SERVICE. *See* SEDUCTION.

LUNATIC
liable for his torts, 43, 44.

M.

MAGISTRATE. *See* IMPRISONMENT.

MAINTENANCE,
definition of, 139.
when action maintainable for, 139.
not where common interest between maintainer and maintained, 140.
nor where maintainer actuated by charitable motives, 140.

MALICE
not usually material in torts, 10 *et seq.*

MALICIOUS PROSECUTION, 131 *et seq.*
bankruptcy, maliciously taking proceedings in, 131.
definition of, 131.
essentials to ground action, 132.
"prosecution" includes bankruptcy and liquidation proceedings, 131.
when actionable, 132, 133.
(1) *Prosecution by defendant*, 132.
prosecution ordered by a magistrate on defendant's information as to facts not sufficient, 132.
unless defendant after ascertaining the innocence of plaintiff maliciously continues the prosecution, 132.
(2) *Want of reasonable and probable cause*, 133.
amount of care required, 135.
duties of judge and jury as to, 133, 134.
onus of proof on plaintiff, 133.
opinion of counsel in favour of prosecution no excuse, 135.
what constitutes, 134, 135.
(3) *Malice*, 135.
adoption of proceedings already commenced, 132.
defective memory, 136, 137.
honest but stupid mistake, 136.
knowledge of defendant that he was in the wrong, evidence of malice, 136.
malice may be implied in a corporation, 45, 137.
to stop plaintiff's mouth, 137.
(4) *Setting aside of proceedings, a condition precedent to action for*, 137.
explanation of the reasons for this, 137.
(5) *Actual damage must be proved*, 138.
need not be pecuniary, 138.

MANUFACTURE,
noxious or offensive, an actionable nuisance. *See* INJUNCTION; NUISANCE.

MARRIED WOMAN
cannot sue her husband for a tort, except for protection and security of her own separate property, 41.
her husband also still liable for wife's torts, 49 *et seq.*
except where tort arises from her contract, 49.
may sue for a tort without joining her husband, 41.

MASTER AND SERVANT,
as to enticing and seducing servants. *See* SEDUCTION.
general liability of master for torts, 54 *et seq.*
accidents occasioned by carelessness of servant, 56, 57.
contractor or intermediate employer liable for torts of workmen, 62.
distinction between unlawful method of doing what he was engaged to do, and unlawful act completely outside the scope of his engagement, 57.
job-master liable, and not hirer of horses, 56.
liability of master for assaults of servant committed in scope of his employment, 58, 59.
master not liable for injuries caused by servant while driving master's carriage on business of his own, 57.
master not liable for servant's torts when committed outside or beyond scope of his employment, 55 *et seq.*
master not liable for torts committed by persons delegated by servant to do his work, 60, 61.
master when liable for illegal act of servant, 58.
liable for wilful act of servant if within the scope of and in the course of his employment, 54.
meaning of term "servant," 55.
unauthorised delegation by a servant of his duties excuses master from delegate's torts, 60, 61.
who are servants, 55.
inducing servant to break his contract of service, 149.
master may in general sue for a tort which deprives him of services of servant, 143.
aliter if servant be killed, 72.
when employer liable at common law for injuries caused by servant to fellow-servant, 204 *et seq.*
And see EMPLOYERS' LIABILITY ACT.
master knowingly employing an unskilful servant, 204.
not liable where there is common employment or a voluntary acceptance of risk, 208.
meaning of common employment, 204.
personal negligence of master, 204, 207.
volunteer helpers are in the position of servants with regard to suing the master for negligence of his true servants, 208.
aliter where acting with master's consent or acquiescence, 209.

MEASURE OF DAMAGES. *See* DAMAGES.

MEDICAL EXPENSES. *See* CAMPBELL'S (LORD) ACT.
MEDICAL MEN,
negligence of, 35.
slandering. *See* DEFAMATION.
MILITARY COURTS,
immunity of, 18.
MINE,
flooding of, by water brought by defendant on to his land and not kept from escaping, actionable, 191.
MISDEMEANOR,
remedy by action for, 25.
where felony charged as, 25.
MISFEASANCE, 30.
highway authorities liable for damage resulting from, 30.
liability for, 37.
MISREPRESENTATION. *See* FRAUD.
MISTAKE
no justification, 8.
MITIGATION. *See* DAMAGES.
MORAL GUILT
generally immaterial in cases of tort, 10–12.
aliter in case of fraud, 11.

N.

NECESSITY,
may excuse what would otherwise be a tort, 15, 272.
NEGLIGENCE,
actions by representatives of a person killed by, 69 *et seq.*
See CAMPBELL'S (LORD) ACT.
amount of care required depends on circumstances, 164.
bailees of goods, duty of, 173.
caused by want of skill, 164.
contributory, 178.
in infants, 181.
in collisions by land and sea, 178.
joint negligence of plaintiff and defendant, 181.
what is, 178.
damage resulting from, 13 *et seq.*, 182.
definition of, 163, 164.
duties of judge and jury in actions for, 185.
duty of occupiers of land and houses, 167.
as to licensees and guests, 170.
trespassers, 170.
not to set spring gun on land, 172.
injuries caused through defective grand stand, 171.
journeyman gasfitter falling through trap-door, 171.
landlord and tenant, duty as between, 169.

NEGLIGENCE—*continued.*
not to put any unexpected danger without warning licensee, 167, 168.
person coming by invitation, 168.
to use reasonable care to prevent damage, 167.
effective cause, 13 *et seq.*, 182.
essentials to ground actions for, 163.
extra care required where defendant has control of dangerous things, 174 *et seq.*
dangerous and savage animals, 194 *et seq.*
when *scienter* necessary, 197.
entrusting loaded gun to inexperienced servant girl, 175.
selling deleterious hairwash, 176.
or even lending dangerous chemicals or other things without warning, 176.
third person finding loaded gun consciously firing it, 175.
highway, duty of persons using, to take care, 165.
negligence of person driving or riding on, 165.
liability for consequences of, 13 *et seq.*
of carriers of passengers, 166.
infant travelling without a ticket, injured by negligence, company liable, 167.
person injured whilst travelling on footboard of train in defiance of a byelaw, 167.
onus of proof of, 183 *et seq.*
accident capable of two explanations, 184.
aliter where the accident would not be likely to happen without negligence, 184.
generally on plaintiff, 183.
heavy article dropping out of window, 184.
railway train thrown off the line, 184.
runaway horse, 183.
skidding motor omnibus, 183.

NEWSPAPERS. *See* DEFAMATION.

NOISE. *See* INJUNCTION; NUISANCE.

NOVUS ACTUS INTERVENIENS
in negligence, 14.

NOXIOUS TRADE. *See* NUISANCE.

NUISANCE,
actions in respect of, 220, 222.
definition of, 219.
description of nuisances, 219, 220.
either public or private, 219, 220.
examples of, 220 *et seq.*
franchises, disturbance of, 242.
right of ferry and market included in, 242.
trade marks, copyrights and patent rights included in, 242.
right to vote for members of Parliament, 242.

NUISANCE—*continued.*
line between public and private, rather fine, 219.
malicious motive immaterial, 229.
prescription to commit, 237.
by Prescription Act seldom necessary to presume lost grant, 237.
twenty years' enjoyment of right, 237.
right given to discharge foul water on land, 237.

(1) *Private injury from public nuisance,* 219 *et seq.*
abatement of public nuisances, 223.
boys breaking railings of area, owner not liable, 227.
dangerous adjacent buildings, relative liabilities of landlord and tenant for nuisance caused by, 225.
examples of public nuisances, 220 *et seq.*
church bells, 87.
excavations on highways, 220.
fumes, 87.
ruinous or dangerous fences or premises on highways, 221.
liability of highway authority, 221.
landlord and tenant respectively, 226.
excavations not adjacent to roads not actionable, 221.
owner or occupier not liable for nuisance created by a third person without his knowledge, 225.
particular damage, 222.
business interfered with is, 223.
premises being rendered dark or less commodious, 223.
interference with private right is, 223.
obstruction cutting off access to highway, 223.
of at highway, 223.
public nuisance only actionable in respect of, 222.
when actionable, 220.
authorised by statute, 221.

(2) *Causing injury to corporeal hereditaments—*
definition of, 229.
disgusting fumes, 230.
distinction between injury to property and annoyance in its user, 230.
entertainments causing crowds and noise, 231.
immaterial whether plaintiff goes to the nuisance or it to him, 234.
interference with enjoyment of property, 230.
noise from pestle and mortar nuisance to consulting room, 235.
noisy dogs, 231.
entertainments, 231.
printing machine, 234.
trade, 230.

NUISANCE—*continued.*
(2) *Causing injury to corporeal hereditaments—continued.*
overhanging eaves, 231.
trees, 231.
pigsties, 231.
reasonableness of place, when no excuse, 232.
small-pox hospital, 231.
the nuisance must be material, 230.
(3) *Affecting incorporeal hereditaments—*
disturbance of natural right to support, 242.
easements and servitudes, 241.
no right to support by subterranean water, 244.
aliter of other substances such as wet sand or pitch, 244.
profits *à prendre*, 241.
railway and canal companies have limited right of support, 244.
remedy by abatement, 239.
not applicable to prospective nuisances, 240.
pulling down inhabited house, 240.
injunction. *See* INJUNCTION.
of reversioner, 238.
right arises *ex jure naturæ*, 243.
of support for land burdened with buildings, 245.
can be gained only by prescription or grant, 245, 246.
may be similarly acquired for support from adjacent houses, 245.
to light and air, 246 *et seq.*
See LIGHT AND AIR.
watercourse, 249 *et seq.*
See WATERCOURSE.
rights of way, 252.
See WAY.
subterranean water, pumping brine from, 244.
title to easements, 241.
where natural right to support is infringed, the consequent damage to a modern house may be recovered, 245.

O.

OBSTRUCTION
of light and air, 246.
See LIGHT AND AIR.
road, 252.
OFFICIAL RECEIVER,
immunity of, 17.
OUSTER. *See* DISPOSSESSION.

P.

PARTNERS,
liability of, for each other's torts, 51 *et seq.*
for torts other than fraudulent misappropriations, *ib.*
fraudulent guarantees, 52.
is joint and several, 51.

PARTNERSHIP,
definition of, 51.

PARTY-WALL,
trespass to, 276.

PASSING OFF,
use of another person's name, 155.
own name with fraudulent intent, 155.
similar name, 156.
what constitutes, 154 *et seq.*

PERJURY,
imputation of, not actionable, unless made with reference to a judicial inquiry, 109.
no action lies for consequences of, 121.

PERSONAL PROPERTY,
trespass to. *See* TRESPASS.

PIGSTY. *See* NUISANCE.

PIT,
accidents from unguarded, 9.

POISONOUS TREES, 194.

POLLUTION OF WATER, 252.

POSSESSION,
writ of. *See* NUISANCE; TRESPASS.

PRESCRIPTION. *See* LIGHT AND AIR; NUISANCE; SUPPORT; WATERCOURSE; WAY.

PRINCIPAL,
liability of, for acts of agent, 52 *et seq.*
See AGENTS.

PRINTER. *See* DEFAMATION.

PRIVATE WAY. *See* WAY.

PRIVILEGED COMMUNICATIONS. *See* DEFAMATION.

PRIVITY
in torts arising out of contract, 33 *et seq.*

PROBABLE CAUSE. *See* MALICIOUS PROSECUTION.

PROBABLE CONSEQUENCE,
every man presumed to intend the, of his acts, 8.

PROFESSIONAL MEN,
negligence of, 35.

PUBLIC,
breach of duty created for benefit of, 28.
PUBLIC AUTHORITIES,
limitation of actions against, 96 *et seq.*
PUBLIC CONVENIENCE
does not justify a tort to an individual, 89.
PUBLIC NUISANCE. *See* NUISANCE.
PUBLIC RIGHT,
infringement of, coupled with peculiar damage to an individual, 6.
PUBLICATION. *See* DEFAMATION; DEFAMATORY ARTICLE.

Q.

QUALIFIED RIGHT,
infringement of, coupled with damage, 5.

R.

RAILWAY COMPANY. *See* CONTRACT; MASTER AND SERVANT; MISFEASANCE; NEGLIGENCE; NUISANCE.
RAILWAY FIRES,
damage by, 200, 201.
liability for damage by, 22.
RATIFICATION. *See* MASTER AND SERVANT.
RECAPTION,
remedy by, 294.
REMOTENESS OF DAMAGE,
in negligence, 13 *et seq.*, 182.
REPLEVIN,
action of, 295.
RES IPSA LOQUITUR,
doctrine of, 183.
REVERSIONER
may enter into and inspect premises, 272.
no remedy given to, for mere transient trespass or nuisances, 239.
remedy of, for injury to land, 238.
for injury to personal property, 288, 289.
some injury to the reversion must be proved, 239.
RIVER. *See* WATERCOURSE.
RUINOUS PREMISES. *See* NUISANCE.
RUNAWAY HORSE,
how far owner liable for damage caused by, 9.

S.

SCIENTER. *See* FEROCIOUS ANIMALS.

SEA,
torts committed at, 39

SEDUCTION,
action for, whence arising, 143.
contract of service, when implied, where the girl is plaintiff's daughter, 144.
small services suffice, 145, 146.
when daughter lives with her father, and is a minor, service is presumed, 144, 146.
aliter where the daughter acts as another's housekeeper, 146.
not even where she supports her father, 146.
where service to another is put an end to, the right of the parent revives, 146.
damages in, 147.
And see DAMAGES.
aggravation of, 147.
breach of promise of marriage not technically matter of aggravation, 148 n.
mitigation of, 148.
previous immorality or looseness, 148.
daughter, of, father may bring action for loss of services of, 144, 145.
if parent helps to bring about his own dishonour he cannot recover, 147.
of orphan girl, action by brother, 146.
of servant from master's employ is actionable, 144.
relation of master and servant essential, 144.
relation of master and servant must subsist at time of seduction and of confinement, 145.
temporary visit no termination of service, 146.
who may bring action for, 145.

SELF-DEFENCE,
tort committed in, 15, 260, 261, 272, 288.

SERVANT
may sue for loss of luggage or personal injury although master paid the fare, 35.
See MASTER AND SERVANT.

SEWER,
nuisance caused by defective, 220.

SHAFT,
unguarded, 9.

SHEEP,
injuries to, by dog actionable without proof of *scienter*, 196, 197.

SHOCK,
death from, 14, 79.

SHOOTING
by accident not actionable, 10.
unless guilty of imprudent act, 10.
SLANDER. *See* DEFAMATION.
SOLICITOR,
legal standard of skill, 165.
slandering a, 110, 111.
SOVEREIGN,
foreign, 43.
not liable for torts, 43.
order of, no defence, 20.
SPRING GUNS. *See* NUISANCE.
STATUTE,
acts authorised by, actionable when negligence proved, 21, 23.
not actionable, 20, 22.
STATUTORY DUTIES,
breaches of, 27 *et seq.*
created for benefit of individuals, 27 *et seq.*
the public, 28, 29.
highway authorities not liable for neglect to perform, 29.
negligence in carrying out, 21, 23.
of highway and sanitary authorities, 29, 30.
STRIKERS,
torts by, 149 *et seq.*
SUPPORT. *See* NUISANCE (2).

T.

TENANT
cannot dispute landlord's title, 279.
but may show that title has expired, 279.
See LANDLORD.
TITLE. *See* DISPOSSESSION; TRESPASS.
TORT,
act or omission must be unauthorised, 15.
authorised acts or omissions, what are, 8.
classification of personal rights, 7.
rights of property, 8.
colonial governor is not a sovereign, and may be sued for, 55.
committed at sea, 39.
definition of, 3, 7.
distinction between actions for, and for breach of contract, 33.
nature of a, discussed, 3 *et seq.*
relation of, and contract, 33 *et seq.*
waiver of, 293.
who may sue for a, 41.
be sued for, 42.

TRADE INTERESTS,
combined action to promote, 10, 12, 149 *et seq.*

TRADE MOLESTATION,
breach of contract, inducing, 149.
without lawful justification, 149.
by threats, violence and conspiracy, 149.
warning employers of consequences is not a threat, 152.
where people by conspiracy further their own trade interest, 151, 152.
legality of peaceful picketing, 153.
procuring breach of contract by fraud, 150.
securing custom unlawfully, 153.
passing off of goods as those of another, 154.
use of one's own name, 154.
under Trade Disputes Act, 1906, 149.

TRADE UNIONS,
injunction will not be granted against, 43.
torts by members of, 149.
Trade Disputes Act, 1906, gives complete immunity from actions of tort, 43, 45.

TRAP,
illegal to permit any danger to exist in the nature of a, 169.
even against trespassers, 172.

TREES,
poisonous, overhanging a neighbour's land, 194.

TRESPASS,
To the person, 255 *et seq.*
actionable without proof of damage, 251.
See ASSAULT; BATTERY; FALSE IMPRISONMENT.
To lands (*quare clausum fregit*), 271 *et seq.*
And see also DISPOSSESSION.
any user going beyond that authorised, 271.
e.g. unreasonable use of public right of way, 271, 272.
by straying cattle, 271.
damages for. *See* DAMAGES.
definition, 271.
driving nails into wall is, 271.
injuries to party-walls, 276.
justification of, 272.
carrying away of soil by one of two joint owners, 276.
in distraining for rent, 272.
driving cattle off plaintiff's land, 272.
executing legal process, 272.
by grantee of easement for the purpose of making repairs, justifiable, 272.
reversioner inspecting premises, 272.
in escaping a pressing danger, 272.
under due legal authority, 272.
re-taking goods, 272.

TRESPASS—*continued.*
To lands (quare clausum fregit)—*continued.*
justification of—*continued.*
limitation of actions for, 276.
of joint owners, 276.
onus of proof of title lies on *primâ facie* trespasser, 275.
plea of *liberum tenementum*, 273.
possession by relation back, 275.
dates back to title, 275.
necessary to maintenance of action for, 274.
reasonable working of coal-mine by joint owner, 276.
remedies other than by action, 277.
distress *damage feasant*, 277.
to highways, 271, 275.
trespassers *ab initio*, 273.
when surface and subsoil in different owners, 275.
when two people are in adverse possession, possession is in persons entitled, 274.
works of necessity, 272.
no actual damage required to support action for, 271.
remedy for, by distress *damage feasant*, 277.
To goods, etc., 283 *et seq.*
action of replevin, 295.
conversion to enforce pledge, 292.
defendant cannot in general set up *jus tertii*, 292.
detention, defence of agency of necessity, 290, 291.
distinction between fraudulent contract and no contract, excessive sale by sheriff, 285. 286.
good intention no excuse, 285.
interference with wrecks, 285.
killing game or animals *feræ naturæ*, 288.
kindly officiousness may amount to, 285.
no remedy if animals get injured whilst trespassing, unless defendant used unreasonable force, 288.
no trespass if plaintiff in fault, 287.
possession necessary to maintenance of action, 288 *et seq.*
follows title, 288.
bailee delivering goods to an unauthorised person revests possession in bailor, 291.
damages for sale of goods by person having a lien, 292.
possession of finder, 292.
primâ facie proof of title, 292.
sale by a person having a lien is a trespass, 292.
trustee may maintain trespass for injuries to goods when possession actually in *cestui que trust*, 292.
what possession suffices, 292.
purchasing goods without title, 286.
in market overt, 287.
recaption, 294.
shooting a trespassing dog, when allowable, 288.

TRESPASS—*continued.*
To goods, etc.—continued.
to animals, 285, 288.
trespass *ab initio*, 290.
in defence of property, 288.
exercise of right, 288.
legal authority, 288.
self-defence, 285.
trespasses of joint owners, 294.
waiver of tort, 293.

TROVER. *See* WRONGFUL CONVERSION.

TRUSTEE
may maintain trespass or conversion for injuries to goods when actual possession in *cestui que trust*, 292.

U.

UNDERGROUND WATER,
man has right to pump, from subsoil under his own land, 10, 11.
not actionable when spitefully done to injure neighbour, being lawful act, 10, 11.

UNFAIR COMPETITION. *See* PASSING OFF.

UNFENCED SHAFT OR QUARRY, 9.

UNINCORPORATED BODIES
cannot be sued, 43.

V.

VIS MAJOR
excuses what would otherwise be actionable, 190, 191, 192.

VOLENTI NON FIT INJURIA, 23, 185, 186.
doctrine of, 185.
inapplicable to breach of statutory duty, 185.
situation of alternative danger, 186.
incurring risks, 23.
not conclusive evidence of, 187.
volunteer servants, 208 *et seq.*

VOLITION,
how far necessary to tort, 8.

VOLUNTEERS
not in general entitled to recover for negligence of a party or his servants, 208, 209.

W.

WALL,
party, 276.
trespass to, by sticking nails into, 271.

WARRANT. *See* CONSTABLE.

WATER,
causing accumulation of, and not keeping it from escaping, whereby another's property is injured, is actionable, unless injury caused by *vis major*, 191–193.
aliter, if caused by act of a third party, 192, 193.

WATERCOURSE,
damage not essential to an action for disturbance of, 251.
disturbance of right to use of, 251.
drawing off underground water, where actionable, 251, 252.
fouling of a well, 252.
penning back water in, 251.
prescriptive rights in derogation of other riparian proprietors, 252.
right to use of surface watercourse vested in riparian proprietors, *aliter* with regard to subterranean water, 250. 249, 250.
rights may be gained in an artificial, 250.

WAY,
customary right of, 253.
obstruction of a public, may be a tort, 10.
private, 252.
only gained by prescription or grant, 252.
private right of way distinguished from public right of, 252.
right of, 252.
strictly limited by terms of grant or by mode of user, 252.

WIFE,
damages in action under Lord Campbell's Act, 70.
liability of husband for torts of, 49.
may sue for loss caused by the killing of her husband, 70.
without joining her husband, 41.

WINDOWS. *See* LIGHT AND AIR.

WORDS. *See* DEFAMATION.

WORKMEN'S COMPENSATION,
alternative remedies, 212.
if right to or amount of compensation disputed, 216.
serious and wilful misconduct proved, employer not liable, 215.

WORKMEN'S COMPENSATION—*continued.*
liability of employer to pay compensation, 212 *et seq.*
accidents—
"arising out of," 214.
"in the course of," 215.
injury by, 213.
what is, 213.
scale of compensation, 216.
in the case of death, 216.
total or partial incapacity, 213.
what workman must show to entitle him to compensation, 214, 215.
time limit for proceedings, 217.
under Act of 1906, 212.
under Act of 1923, 215.
to whom it applies, 215, 216.
words "injury" and "accident," meaning of, 213.

WRECKS,
interference with, 285.

WRONGDOER,
all things are presumed against a, 78.
any possession sufficient to sustain trespass against a, 274, 288.

WRONGFUL CONVERSION,
agency of necessity no defence to, 291.
conversion and detention, 290.
judgment for return of specific goods, 291.
in an action for, 290.
is for damages only, 291.
plaintiff need not show good title to goods as against everyone, 290.
only show that he is entitled to them as against defendant, 290.
proof of, 291.
to maintain an action for, 290.
conversions of joint owners, 294.
definition of—
"conversion," 283, 284.
"detention of goods or detinue," 283.
"trespass," 283.
possession follows title, 288.
any possession suffices against a wrongdoer, 288.
possession of finder, 292.
primâ facie evidence of title, 292.
sale by one having a lien is a conversion, 292.
unauthorised delivery by bailee revests possession in bailor, 292.
possession necessary to maintenance of action for, 290.
recaption, 294.
replevin, 295.

WRONGFUL CONVERSION—*continued.*
reversioner cannot sue for, 288, 290.
reversioner's remedy, 288.
subsequent conversions of lawfully obtained chattel, 291.
waiver of tort, 293.
what is, 283, 284.
conversion where damages sought, 284.
detinue for return of goods, 284.
excessive execution, 285.
good intention no excuse for officious interference, 285.
purchase of goods from a person not entitled, even by a *bonâ fide* purchaser, 286.
from person who has obtained goods by fraud may or may not be a conversion, 286.
is convicted of obtaining the goods by false pretences, 287.
of goods in market overt, 287.
selling another's goods by mistake, however *bonâ fide*, 286.
when defendant may set up *jus tertii*, 292.

Printed at THE BALLANTYNE PRESS
SPOTTISWOODE, BALLANTYNE & CO. LTD.
Colchester, London & Eton, England

AUG. 1930